Dallas Bar Association

HEADNOTES

September 2025 | Volume 50 | Number 9 | Focus | Family Law

Victor Vital – DBA Trial Lawyer of the Year

BY JESSICA D. SMITH

During his college years, a love of arguing—and a well-timed suggestion—set **Victor Vital** on a path to law. Years later, that resolve and dedication result in the honor of being named the 2025 Dallas Bar Association Trial Lawyer of the Year, a fitting recognition of a lifelong commitment to the Rule of Law.

Victor's legal career began with a spark of curiosity but quickly grew into a calling. While studying in college, a friend casually suggested law school, knowing Victor's natural talent for argument. "I decided to become a lawyer in college immediately after a friend of mine offhandedly asked me, 'Why don't you go to law school since you love arguing so much?'" Victor recalled. "I had never considered law school, but the idea made sense immediately, especially considering how I loved the courtroom scenes on the show *L.A. Law*."

That cinematic inspiration quickly turned into real-world experience. One of his most formative memories comes from his earliest days as a young prosecutor in Harris County.

"I had just taken the bar exam but hadn't received my results yet, so I was working under a third-year bar card. That first week, I found myself in court picking a jury, examining witnesses, and presenting my case," Victor said. "It was exhilarating. That thrill hasn't gone away 30 years later."

Over the span of his career, Victor has become widely recognized for his skill in the courtroom, his ability to connect with juries, and his sharp instincts under pressure.

What sets Victor apart is his natural ability to dive into even the most complex legal issues and quickly make sense of them. Whether he's handling a business dispute, an intellectual property matter, or a high-stakes criminal case, he has a talent for turning complicated facts into compelling stories that resonate in the courtroom. Clients turn to Victor not because of tenure or title, but because he brings a fresh perspective, sharp strategy, and a clear understanding of what really matters. He earns trust fast—and delivers results—whether at trial or at the negotiating table.

Recently, Victor returned to Haynes Boone in the position of Global Chair of the Trials Practice Group. The group is comprised of a deep bench of experienced litigators in the United States, London, and Mexico City who practice across many industries, helping clients resolve complex and high-stakes disputes in federal, state and international courts as well as

Victor Vital

through arbitration. In his new position, he has significantly elevated the Haynes Boone internal training program by designing an in-house trial academy to equip the next generation of litigators with essential trial advocacy skills through immersive instruction, hands-on workshops, and live mock trials.

"As litigation becomes more complex and the stakes grow higher, firms must train lawyers who not only know the law and can write great motions, but who can also tell a compelling story under pressure. The HB Trial Academy was developed to lay a foundation upon which Haynes Boone litigators can build to eventually try disputes of consequence," he stated in a recent interview with *Texas Lawbook*.

He attributed his return to the firm to the strength of Haynes Boone's alumni program, stating that the connection of the alumni group helped him create a full-circle moment, returning to the place where he first made partner.

Victor's work spans high-stakes civil and white-collar criminal cases, consistently earning him accolades across the legal profession. He is a Fellow of the Litigation Counsel of America, Dallas Bar Foundation, American Bar Foundation, and the Texas Bar Foundation and is a member of the American Law Institute. He has been recognized by

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DBA Jurist of the Year: Catharina Haynes

BY JESSICA D. SMITH

Some people discover their calling late in life. Others seem born with it. At just 10 years old, **Catharina Haynes** knew exactly what she wanted to be: a lawyer. Several decades later, that childhood vision has come full circle—culminating in being named the 2025 Dallas Bar Association's **Hon. Barbara M.G. Lynn Jurist of the Year**.

The award was established to honor judges who make significant contributions to the legal community in the North Texas area and demonstrate high ideals, exemplary personal character, and judicial competence.

"Judge Haynes first made an impression upon me when I was a law clerk at Thompson & Knight and she was the rising star associate. She was knowledgeable and well respected as one of the model associates. Her years on the bench confirm that she continues to be well respected in the legal community. Throughout her busy career, she has remained supportive of the Dallas Bar Association, by not only attending herself, but also bringing her law clerks who are interested in coming," said Vicki Blanton, DBA President.

Judge Haynes grew up in Brevard County, Florida and graduated with honors from the Florida Institute of Technology with a B.S. in Psychology.

She then pursued her childhood dream of becoming a lawyer by attending Emory University School of Law where she was a Notes and Comments Editor of the *Emory Law Journal* and a member of Order of the Coif. In 1986, she received her J.D. with distinction.

"My family had no lawyers (mainly teachers and scientists), but my grandparents talked to me at a young age about the importance of justice for all. It occurred to me that becoming a lawyer would assist justice for all, so I decided at age 10 to become one," said Judge Haynes.

She made her way to Dallas on the advice of her Director of Placement and Alumni Relations who recommended that she spend part of her second-year summer at a law firm in Dallas. Her summer internship led her to not only

Catharina Haynes, age 10

her legal practice and the foundation for her prolific career in the Dallas legal community, but also to the happy meeting of her husband, attorney **Craig Haynes** (they celebrated their 37th anniversary this year).

Judge Haynes spent 13 years in private practice, including serving as a partner at a large law firm. She is board certified in Consumer and Commercial Law by the Texas Board of Legal Specialization. She was appointed as a Circuit Judge of the United States Court of Appeals for the Fifth Circuit in April of 2008, having been confirmed by the Senate. Prior to taking the federal bench, she served eight years as a state district judge in Dallas.

To say that Judge Haynes is active in the legal community is an understatement. She has been on, and on some, led numerous Boards, groups, Inns of Courts, and more. She hosts legal interns every summer, not only mentoring them, but also bringing them to DBA luncheons, and introducing them to the Dallas legal community. She has served on the DBA Board of Directors, on the Alumni Advisory Board of the Emory University School of Law, as Chair of the Appellate Judges Education Institute, and as

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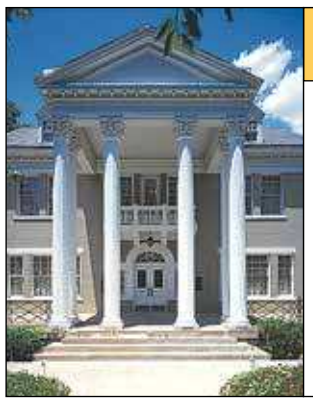


Inside

Calendar | September Events

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

NATIONAL HISPANIC HERITAGE MONTH

September 15-October 15 is National Hispanic Heritage Month. For information about the Dallas Hispanic Bar Association, visit dallashispanicbar.com.

WEDNESDAY WORKSHOPS

SEPTEMBER 3

Noon *"Procedural Landmines in Texas Labor and Employment Law," Amy Carter and Heather Davis.* (MCLE 1.00, Ethics 0.25)* *Virtual only*

MONDAY, SEPTEMBER 1

DBA offices closed in observance of Labor Day

TUESDAY, SEPTEMBER 2

No DBA events scheduled

WEDNESDAY, SEPTEMBER 3

Noon **Employee Benefits & Executive Compensation Law Section**
"Hot Topics in U.S. Health," Hillary August and Susan Carlson. (MCLE 1.00)* *Virtual only*

Solo & Small Firm Section
"Texas Title Insurance," J. Edwin Martin. (MCLE 1.00)*

Wednesday Workshop
"Procedural Landmines in Texas Labor and Employment Law," Amy Carter and Heather Davis. (MCLE 1.00, Ethics 0.25)* *Virtual only*

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

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

THURSDAY, SEPTEMBER 4

10:00 a.m. Membership Committee. *Virtual only*

Noon **The Privilege - General Counsel Series**
A Conversation with Stephanie Culpepper and Tyler Griffin. (MCLE 1.00)* ***In person only***

Construction Law Section
"Legislative Update," Ben Westcott. (MCLE 1.00)* ***In person only***

5:30 p.m. **Allied Bars Equality Committee Privilege & Perspective**
Join us for an interactive evening as we as we explore how to attract and retain a more diverse group of Dallas attorneys in our organizations through proactive, deliberate actions to overcome barriers. RSVP at dallasbar.org. (DEI Ethics 1.00)*

FRIDAY, SEPTEMBER 5

No DBA events scheduled

SATURDAY, SEPTEMBER 6

7:00 a.m. **DAYL Freedom Run**
Register at freedomrun.com

MONDAY, SEPTEMBER 8

Noon **Real Property Law Section**
"The Annotated Title Commitment," Cade Kauffman and Billy Thomas. (MCLE 1.00)*

Tax Law Section
"The Use and Disuse of Nonoperating Assets in Business Valuations," Will Frazier. (MCLE 1.00)* ***In person only***

Attorney Wellness Committee. *Virtual only*

TUESDAY, SEPTEMBER 9

Noon **Business Litigation Section**
"Where's the Loyalty? Recent Developments Regarding Fiduciary Duties in Corporations, LLCs, and Partnerships," Prof. Elizabeth Miller. (MCLE 1.00, Ethics 0.25)* *Virtual only*

Immigration Law Section
Topic Not Yet Available

Mergers & Acquisitions Section
"The Texas Business Court - One Year After its Inauguration and DExit," Byron Egan and Hon. Bill Whitehill. (MCLE 1.00)*

Tort & Insurance Practice Section
"From Coverage to Cash," Alexander Clark, Andy Jones, and Reese Letourneau. (MCLE 1.00)* ***In person only***

Courthouse Committee. *Virtual only*

Home Project Committee. *Virtual only*

Legal Ethics Committee. *Virtual only*

Morris Harrell Professionalism Committee. *Virtual only*

5:00 p.m. **Hearsay Speakeasy**
Join fellow DBA members for a social hour with drinks and hors d'oeuvres. Password found on page 4.

DWLA Board of Directors

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

WEDNESDAY, SEPTEMBER 10

9:00 a.m. **DMAP AI Program**
"Say 'Hello' to the Future: Harnessing Generative AI in Your Law Practice," Andrew Gardner, Wei Wei Jeang, Chris Schwegmann, Russell Smith, and Victor Vital. (MCLE 3.00)* ***In person only***

Noon **Bankruptcy & Commercial Law Section**
Topic Not Yet Available

Child Welfare/Family Law Sections
"Obtaining Judicial Birth Certificates," Ebony Rivon. (MCLE 1.I00, Ethics 0.50)* ***In person only***

Public Forum Committee. *Virtual only*

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

THURSDAY, SEPTEMBER 11

Noon **Alternative Dispute Resolution Section**
"Avoiding Land Mines with Arbitration Clauses," Jonathan Childers, Andrew LeGrand, and Brian Robinson. (MCLE 1.00)* *Virtual only*

CLE Committee. *Virtual only*

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

Publications Committee. *Virtual only*

3:30 p.m. DBA Board of Directors

FRIDAY, SEPTEMBER 12

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

MONDAY, SEPTEMBER 15

Noon **Labor & Employment Law Section**
Topic Not Yet Available

Government Law Section
Topic Not Yet Available

Senior Lawyers Committee. *Virtual only*

TUESDAY, SEPTEMBER 16

Noon **Antitrust & Trade Regulation Section**
Topic Not Yet Available

Education Law Section
"Employment Law and Executive Orders- What Education Lawyers Need to Know," Katie Anderson. (MCLE 1.00)* *Virtual only*

International Law Section
Topic Not Yet Available

Community Involvement Committee. *Virtual only*

Entertainment Committee. *Virtual only*

6:00 p.m. DAYL Dinner with the Judiciary
Contact cherieh@dayl.com

WEDNESDAY, SEPTEMBER 17

8:30 a.m. **Relaunch Program**
Questions? Contact virimejia@dallasbar.org

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

Energy Law Section
"Filing and Challenging of Mineral M&M Liens," S. Jordan Smith. (MCLE 1.00)* ***In person only***

Entertainment, Art & Sports Law Section
"Changing the Playbook: Representing Athletes, Schools, and Conferences in the House Era," James McFall and Grant Newton, Sr. (MCLE 1.00)* *Virtual only*

Health Law Section
"Trends in Federal Criminal Cases – What Your Healthcare Clients Should Know," Kate Rumsey and Sarah Wirskye. (MCLE 1.00)* ***In person only***

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

Pro Bono Activities Committee. *Virtual only*

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

THURSDAY, SEPTEMBER 18

11:00 a.m. **Bench Bar Conference** at The Hilton Dallas-Rockwall Lakefront. Register online at dallasbar.org.

Noon **Appellate/Business Litigation/Government Sections**
"Get to Know the 15th Court of Appeals," Chief Justice Scott Brister, and Justices Scott Field and April Farris, and moderator Anne Johnson. (MCLE 1.00)*

FRIDAY, SEPTEMBER 19

8:45 a.m. **Bench Bar Conference** at The Hilton Dallas-Rockwall Lakefront. Register online at dallasbar.org.

SATURDAY, SEPTEMBER 20

9:00 a.m. DBA Day of Service.
To volunteer, log on to dallasbar.org.

MONDAY, SEPTEMBER 22

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

Securities Section
"Real Estate as a Security: From the Howey Test to the Advisers Act," Jason Barnes, Michael Navarro, and Sophie Wen. (MCLE 1.00)*

TUESDAY, SEPTEMBER 23

No DBA events scheduled

WEDNESDAY, SEPTEMBER 24

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

THURSDAY, SEPTEMBER 25

Noon **Day of Civility**
Civility and Professionalism in Practice. (Ethics 2.00)* ***In person only***

Criminal Law Section
Topic Not Yet Available

Environmental Law Section
Topic Not Yet Available

Intellectual Property & Franchise Sections
"Intersection of Franchise Law and Intellectual Property," Anthony Lowenberg, Dina McKenney, Wilson Miller, and Cheryl Mullin. (MCLE 1.00)*

Minority Participation Committee. *Virtual only*

6:00 p.m. DAYL Annual Meeting

FRIDAY, SEPTEMBER 26

9:00 a.m. **Appellate Law Section Workshop**
Oral Argument Workshop. Co-hosted by DAYL and DBA Appellate Law Section. At George Allen Courthouse.

SATURDAY, SEPTEMBER 27

7:00 p.m. **DHBA Noche de Luz Gala**
Tickets at dallashispanicbar.com. At the Joule Hotel.

MONDAY, SEPTEMBER 29

No DBA events scheduled

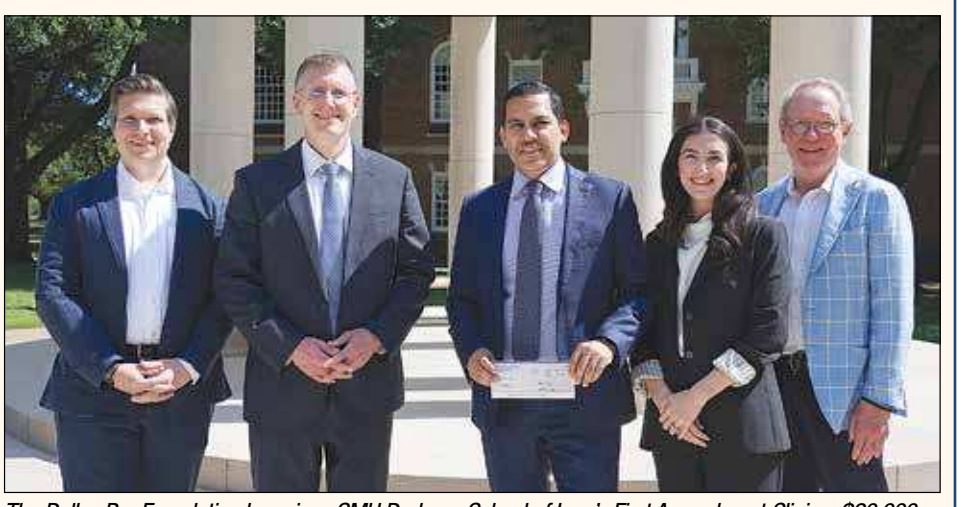
TUESDAY, SEPTEMBER 30

Noon **Allied Bars Equality Committee**
"Book Club – 'Shortlisted: Women in the Shadows of the Supreme Court' by Renee Knake Jefferson & Hannah Brenner Johnson," Prof. Renee Knake Jefferson, Hon. Rebecca Rutherford, and moderator Ashely J. Wright. (Ethics 1.00)* *Virtual only*

Minority Participation Committee
"AI: Ethical Considerations and Practical Use," Bria Riley. (MCLE 1.00, Ethics 0.50)* *Virtual only*

Probate, Trusts & Estates Law Section
"2025 Legislative Update," Christian Kelso. (MCLE 1.00)* ***In person only***

Dallas Bar Foundation Awards Grant



The Dallas Bar Foundation has given SMU Dedman School of Law's First Amendment Clinic a $20,000 grant, ensuring the clinic will continue to serve the local community while providing real-life legal training for students for years to come. Pictured are (left to right): Peter Steffensen, Asst. Director First Amendment Clinic; Dean Jason Nance, SMU Dedman School of Law; Gabe Vazquez, Dallas Bar Foundation Chair; Addison Bruce, DBF Philbin Fellow; and Tom Leatherbury, Director, First Amendment Clinic.

If special arrangements are required for a person with disabilities to attend a particular seminar, please contact Alicia Hernandez at (214) 220-7401 as soon as possible and no later than two business days before the seminar.

All Continuing Legal Education Programs Co-Sponsored by the DALLAS BAR FOUNDATION.

For confirmation of State Bar of Texas MCLE approval, please call the DBA office at (214) 220-7447.

President's Column

Mentoring Matters

BY VICKI D. BLANTON

We are in an interesting time where we have four generations in the workplace. Each has a different workstyle of expressing their presence in the workplace. Of course, there is the usual comment from each group of "why can't they understand how I work"? I submit to you one of the best methods to gain a greater understanding is through mentoring. And, I don't necessarily mean formal mentoring programs, although that is a great place to start.

If you are interested in formal mentoring, the Dallas Bar Association has many opportunities. The WE LEAD program focuses on midcareer mentoring. The ECL program focuses on those starting their own firms. Various Committees and Sections have pipelines to leadership positions.

However, equally important are the informal opportunities for mentoring. The best way to learn to look and act "lawyerly" is to observe those acts in real time and space (IRL, for my Gen Ys). Thus, representation matters, because it is hard to emulate what you cannot see or experience. Therefore, to my Boomers and Gen Xers, who all observed the Silent Generation's version of being lawyerly, it is now your turn to show up, in person, to be an active role model.

Don't fall for the old diatribe that they aren't listening to you. As with most generational transfers of knowledge, they don't listen, opting to learn life's lessons the hard way through the school of hard knocks and experience. But they do watch and absorb, even if inadvertently.

I first learned this lesson when my mother told me that my older daughter watched me intently. I had never noticed. Often, when I looked in her direction, my daughter seemed to be more interested in something else. After my mother's comment, I paid closer attention to the questions that my daughter asked, as to why and how I did things. I felt her quiet gaze on me, her keen observance of my actions. This made me more conscientious about how I presented myself as a role model. Today, she certainly has her own style, but I often see in both of my daughters that the base model of their workstyle is from me.

Thus, I've taken every opportunity I can to mentor others, as I pay forward what my mentors poured into me. In fact, I've been given several mentoring awards. The greatest reward, however, is watching my mentees achieve success, whether great or small. In the past few weeks, I have had the opportunity to see many of my mentees accomplish great things that I hope some word of advice that I gave helped them along the way. In fact, I even asked about what specific advice I gave that they found particularly helpful. I received only a few responses.

One of my law students said my "MADE" business email method was great advice. One bar leader said that I imparted that a successful bar year was sufficient to just keep the train on the tracks, as this advice helped to alleviate the pressure of exaggerated expectations. One person stated that my advice to "just keep going" had helped them to realize the various cycles of ups and downs in a long-term legal career as I reminded them that a legal career is a marathon, not a sprint.

From my perspective in the mentoring relationship, there are at least two benefits that I appreciate. First, there is nothing like watching your mentees hit their stride in achieving their goals. Within the last month:

- I witnessed one mentee begin her local bar leadership journey as she took her oath as a board member.
- Another mentee elevated her bar leadership to a regional level as part of a national bar organization while also experiencing the pride of creating a legacy of the third leadership class, a program that she initiated while serving as president of an Allied Bar.
- As I celebrated one mentee's life milestone, who overcame significant life challenges during law school, she quoted me to me about the importance of understanding whether the mentee was acting as "a coach, a confidante, or a champion."

These are but a few examples of how I get the opportunity of sharing the joy of their achievements.

Second, although I may have the mentor title in the mentoring relationship, I often become the mentored. I may not be on every social media platform, but I understand the necessity of that form of effective communication and messaging. I continue to appreciate the pressures of work/life balance, even with the shift of younger generations to prioritizing greater life opportunities than work obligations than older generations did. And, yes, the conversation always turns to musical tastes and preferences, which is every generation's touchpoint.

Ultimately, mentoring is a way to bridge gaps, create communication opportunities, and enhance relationships—on both sides of the equation. For mentees, representation matters for those who need to see what it is to be "lawyerly." As a mentor, engagement brings about understanding and connectedness to the evolution of the humanity of the profession. A true legacy is what expands beyond you in all directions, and mentoring is a surefire way to create a legacy.

Speakeasy password – Mentoring Matters

Vicki

JLTLA & DWLA Star of Achievement

Congratulations to both J.L. Turner Legal Association and Dallas Women Lawyer's Association for receiving a Star of Achievement Award from the State Bar of Texas for their documentary A Law Unto Themselves, a joint project between the associations.

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

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

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Focus | *Family Law*

Statutory Caregiver Authorization Agreements Protect Children

BY BRENDA BALLÍ

The highest court in the land has long held that the Constitution protects parents' fundamental right to make decisions concerning the care, custody, and control of their children. *Troxel v. Granville*, 530 U.S. 57, 66, (2000). But what happens to children when parents are unable to make these day-to-day decisions? In Texas, almost 378,000 children are being raised in households with neither parent present. Filing a Suit Affecting the Parent-Child Relationship (SAPCR), is sometimes a costly and lengthy process, and it may contribute to the trauma faced by parents and children separated from one another.

Caregiver Authorization Statute

In 2009, the Texas legislature passed into law a caregiver authorization statute to address the need for parents to delegate specific decisions to adult nonparents through a low-cost and low-stress means that does not require a court proceeding. Introduced as a "statutory power of attorney of a caregiver of a child," the bill is codified in Chapter 34 of the Texas Family Code, governing authorization agreements for nonparent adult caregivers.

Without a Chapter 34 authorization agreement in place, the nonparent caring for a child is unable to make a host of decisions relating to the child, potentially jeopardizing the child's safety, health, and wellbeing. Nonparents cannot consent to children's vaccines or medical, dental, psychological, or surgical treatment, obtain health insurance coverage for the children, or apply for and receive public benefits for them. In addition, nonparents cannot obtain copies or originals of the child's federal or state issued identification documents, including social security cards or birth certificates, likely impeding other services and programs. Further, a nonparent cannot authorize an older child to participate in extracurricular activities, obtain a learner's permit, or get a job—significant milestones for older children—because these typically require a parent or guardian's signature. A nonparent's inability to make these parental decisions, at best, interferes with a child's wellbeing and, at worst, endangers a child's safety and health.

Section 34.0015, *et seq.*, permits one or both parents and an adult nonparent to enter into a caregiver authorization agreement. For the cost of a notarized document, an executed authorization agreement gives parents a low-cost and low-stress tool to delegate specific parental decisions to a trusted nonparent. A caregiver authorization agreement is effective immediately, requires no court proceeding, and automatically renews every six months unless it is terminated. Termination can occur by a parent on demand or by certain court orders regarding children. Tex. Fam. Code § 34.008.

Agreement Disclosures

Despite the ease of executing authorization agreements, parents and caregivers must read all the "warnings and disclosures" before signing the agreement. For example, a parent may terminate the agreement and resume the care, custody, possession, and control of the child on demand. The failure to immediately return the child to the parent may have criminal and civil penalties. Notably, while a caregiver may be liable for certain expenses relating to the child, the parent retains the parental obligation to support the child.

Underscoring Texas law that fit parents are presumed to act in their children's best interests, the statute warns parties that authorization agreements alone do not confer legal custody or legal guardianship of children on caregivers, and authorization agreements do not affect parental rights as to the care, custody, and control of children.

Parents are further warned that their parental rights may be adversely affected by placing their children with another person. In suits filed on or after September 1, 2025, general standing is given to persons who have had exclusive care, control and possession of the child for at least six months ending not more than 90 days before the petition is filed. Parents are cautioned to enter into authorization agreements with only trusted nonparents.

Furthermore, the caregiver authorization statute has been useful to practitioners outside the context of family law. Parents in immigration proceedings have used the authorization agreement as part of their emergency toolkit, while parents in criminal proceedings have executed authorization agreements to secure the safety of their children or avoid exposing their children to the trauma and danger of a parent's arrest.

Across the DFW metroplex, legal clinics staffed by volunteer attorneys, paralegals, and advocates help parents and caregivers to complete caregiver authorization agreements. These agreements, governed by Chapter 34 of the Texas Family Code, help parents in challenging circumstances prepare for the continuity and stability of their children's safety, health, and wellbeing. **HN**

Brenda Ballí is an Attorney at O'Neil Wysocki, P.C. She can be reached at brenda@owlawyers.com.

Focus | *Family Law*

The Rarity of Jury Trials in Family Law

BY HOPE CORY

Everyone learns in law school that jury trials are a hallmark of our judicial system. However, jury trials in Texas family law matters are surprisingly few and far between.

The Texas Judicial Branch maintains statistics on the frequency of all cases that reach the final trial stage, and whether those trials are tried by a judge (a bench trial, asking the judge to serve as the trier of fact), or a jury. These statistics confirm the rarity of jury trials in family law cases—particularly compared to other areas of the law, such as criminal or other civil cases. Official data confirms that from September 2023 to August of 2024, only approximately 0.03 percent of all property—only divorce cases were disposed of via jury trial. Put another way, for those 12 months, in the entire state of Texas, only 15 property-only divorce cases reached a jury verdict. In contrast, roughly 28 percent of all property-only divorce cases were disposed of via a bench trial.

Compare this to disposed of felony cases in Texas for the same time period; approximately 24 percent of those cases went to a jury. Juries were selected for standard civil cases *ten times more* than family law cases. The statistics illustrate that jury trials in family law are far less common than in other areas of the law.

Jury trials in family law are less utilized, as they can be seen as very inefficient, and questionably worth the judicial resources of the court system. A family law jury only has a few issues it can decide. The Texas Family Code Section 105.002 provides that a party is entitled to a jury verdict regarding conservatorship, a child's primary residence, and a geographic restriction on the child's residence. With regard to property issues arising in a divorce, Texas law limits a jury's involvement to the value of community property, characterization of property, and fault grounds as the basis for the divorce. Consequently, this reserves the most significant decisions in family law cases for the presiding judge, namely, a parent's possession schedule, child support, and how property in a divorce will ultimately be divided, through a "just and right" division.

This clearly leads to another possible explanation for the rarity of jury trials for Texas family law cases, which is that many central family law issues are reserved solely for the judge's purview and out of the hands of the jury, meaning that a practitioner trying a jury trial will have to tailor their arguments to both the judge *and* the jury, and the client will have to brace themselves for the financial impact accordingly.

Another practical reality accounting for a lack of jury trials in family law cases became apparent at the start of our trial. Despite pulling from a pool of more than 100 prospective jurors, it was incredibly difficult to ultimately select 12 individuals and two alternates who did not vehemently object to, earnestly complain about, or creatively try to avoid being wrangled into a multi-week family law jury trial.

Juries remain a tool in the toolbox for family law litigators but are often like cutting with an axe when a scalpel would be better suited for the job, as arguably the most significant issues are reserved for the judge's determination. **HN**

Hope Cory is an Associate at Wilson, Lake, & Savage, PLLC. She can be reached at hope@wilsonlakesavage.com.

Focus | *Family Law*

Real Property in Divorce: Ownership and Considerations

BY LAURA H. CASTON

Real property is a staple asset in the financial portfolios of many Texas residents. Since before Texas was a Republic, our laws governing ownership and characterization of real property have consistently recognized the existence of community property. This article is intended to offer a high-level discussion of potential issues related to characterization and ownership of real property, as well as potential risks that may be minimized or avoided with proper planning.

Generally, a properly and fully executed deed, absent certain exceptions, is presumed valid. But even with a presumptively valid instrument conveying real property, there may be a dispute over ownership and characterization, as well as significant risk exposure.

Characterization of property is a question of fact and is frequently challenged in divorce proceedings, even when both spouses are included on the conveyance instrument. For example, if the down payment originated from one spouse's separate property (subject to tracing), the real property may be of a mixed character—a separate property portion equivalent to the percentage of the down payment belonging to the depositing spouse, and the remainder being community property subject to a just and right division between both spouses.

Ownership of real property is a question of law; however, equitable principles can play a role in characterization and ownership, despite the timing of the conveyance and the identity of the party named on the conveyance instrument. For example, in one recent case a deed was executed prior to marriage solely by Husband, yet the court found that both Husband and Wife maintained a separate property interest. The unique facts that persuaded the court included that the home was purchased from Wife's parents and both parties acknowledged a first-time home buyer benefit.

Characterization and ownership are commonly challenged where the conveyance instrument is a result of a refinance of a mortgage on a spouse's separate property, where both parties' names end up on the deed. In those circumstances, the spouse claiming the real property is his or her separate property will have to rebut the presumption of a gift to the other spouse by clear and convincing evidence, despite the face of the deed conveying at least a partial separate property interest to the other spouse.

When real property is conveyed to a trust, a limited liability company (LLC) or a partnership, arguments are frequently made regarding a purported change in characterization or ownership. A common misconception is that conveying legal title of real property to the trustee of a trust changes its characterization. Without diving into the distinctions between a revocable and irrevocable trust, and absent unique circumstances such as the existence of a property agreement, fraud, or a partition in the trust agreement at the time of transfer, placing real property in a trust generally does not change the characterization or ownership of property.

Unlike a trust, characterization of real property could change if it is acquired by an LLC established prior to marriage. When assets are conveyed to an LLC or a partnership, the assets belong to the entity and thus lose their characterization as community or separate property. Characterization of the member interest in the entity determines what may be divided as a part of the division of the community estate. In this circumstance, absent a change in member interest or other unique circumstances, remedies for recovery may be limited to piercing the corporate veil or recovery through equitable claims like reimbursement, quantum meruit, or a disproportionate division.

In addition to issues involving characterization and ownership, there are areas where real property can expose one to risk upon divorce. A common request for relief in divorce proceedings is a reimbursement claim against separate real property for improvements made using community funds. Although reimbursements are equitable, they are commonly awarded if proved.

Circumstances also often exist where efforts to diversify lead to high-risk exposure, jeopardizing wealth and warranting careful consideration when dividing that asset in a divorce. In the VRBO era, many people own multiple properties that may not be adequately protected, whether by virtue of appropriate insurance or maintaining ownership of the real property through an LLC. Contingent liabilities associated with these properties, if not properly protected, could have a devastating effect on one or both parties after the ink is dry on their divorce decree, ultimately affecting their award of marital assets.

Digging deeper, the deed is not the end of the story. To safeguard an interest in real property, particularly separate real property, assess your goals and periodically reevaluate your strategy based on personal and market circumstances. A qualified team can help evaluate your goals and ensure safeguards are put in place to protect your interests. **HN**

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Focus | Family Law

When a Guardian Seeks Divorce: Texas Supreme Court Update

BY CLINT WESTHOFF

In a decision with serious implications for guardianship and family law in Texas, the Texas Supreme Court recently addressed the issue of when a guardian can initiate a divorce on behalf of a person under guardianship (known as a *ward*). The ruling clarifies a key requirement: unless a court *expressly finds* that divorce will *promote the ward's well-being and protect the ward's best interests*, a guardian is *not authorized* to pursue divorce—even if the guardianship order authorizes the filing of divorce in general terms.

The Background: A Dispute Over Divorce and Inheritance

The case involved a father with declining mental capacity. After his daughter initiated guardianship proceedings, but before a guardian was appointed, the father changed his estate plan—disinheriting his children in favor of his wife. He also signed documents disqualifying any of his children from serving as his guardian. To further complicate matters, he had previously signed marital property agreements with his wife that eliminated any community property estate, while his old estate plan left his property to his children.

Eventually, a guardian (not the daughter initially) was appointed and filed for divorce on the father's behalf. That case was dismissed. Later, the daughter herself was appointed guardian and filed a new divorce case; this time, the trial court granted a divorce. The wife appealed the decision, but before the appeal concluded, the husband passed away.

The litigation did not end there, however. At the center of the dispute were several issues:

- A prior will leaving assets to the children
- A newer will leaving everything to the wife and
- Marital property agreements between the wife and the deceased that further complicated the estate

The Court's Ruling: Express Finding Required

The Texas Estates Code requires that any action taken by a guardian must be both:

1. In the best interest of the ward and
2. Necessary to protect and promote the ward's well-being

While the guardianship order in this case allowed the guardian to file lawsuits—including a divorce—it was not enough. Neither the probate court overseeing the guardianship nor the family court that granted the divorce made an express finding that divorce was in the ward's best interest. And since the ward had passed away, no such finding could be made after the fact.

As a result, the Texas Supreme Court vacated the entire divorce decree. The result of this ruling was the termination of the ward's marriage by death, not divorce.

Why This Case Matters

This decision draws a bright line for attorneys and guardians: if a guardian wishes to file for and conclude a divorce on behalf of an incapacitated person, a specific court ruling is required stating that the divorce is in the ward's best interest. A general authority to sue is not enough, and even an express authority to file a divorce is insufficient.

Other possible scenarios that were not at issue in this case could also arise. For example, what if a divorce is filed by a competent person who later becomes incompetent? What if a competent spouse files for divorce against a competent spouse who becomes incompetent, or files directly against an already incompetent spouse? It is important to have a lawyer that knows how these scenarios will be treated in divorce court and probate court.

Key Takeaways for Guardians When Defending or Filing a Divorce

- Do not assume that general guardianship authority allows for divorce filings.
- Request an express finding from the court that divorce serves the ward's best interests, before initiating proceedings and as part of finalizing any settlement.
- Coordinate carefully between the probate and family law attorneys to ensure that proper procedures are followed.
- Recognize the potential estate planning implications—especially where multiple wills, marital property agreements, and heirs are involved.

Family members already face a difficult situation when dealing with a close relative who is or is becoming incompetent. These types of situations are already difficult and emotional, and a divorce makes them even more so. A knowledgeable family law attorney who can work with an experienced probate lawyer is essential in these situations. **HN**

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Focus | *Family Law*

Digital Assets in Divorce

BY CATHERINE LUX

Cryptocurrency and digital assets have evolved from niche investments for day traders to mainstream holdings, creating new challenges for family law practitioners navigating discovery. What once involved straightforward discovery of cryptocurrency through bank statements showing transfers to Bitcoin, Coinbase, or similar crypto-only trading sites and tax returns showing investments or capital gains now requires a more sophisticated process of analyzing transaction histories. Large brokerage, investment, or cash transfer companies like Robinhood, E-Trade, Fidelity, PayPal, and CashApp now offer cryptocurrency trading alongside traditional services. Combined with tactics like using online retailers to conceal cryptocurrency transactions, detecting hidden digital assets has become increasingly difficult. Ironically, standard discovery requests might already capture crypto—you might just not know what to look for.

For example, in one case, a wife's divorce seemed straightforward until she noticed something odd on their joint Fidelity statement: a round-number $50,000 transfer to 'RH.' When her attorney asked the husband about it during discovery, he claimed it was for day-trading stocks that lost money. But the wife remembered him bragging at a party about his Bitcoin profits. Her attorney almost missed it, too; after all, they had already subpoenaed the Fidelity records. What more was there to find?

The primary issue with cryptocurrency in divorce proceedings is that it functions as the modern-day equivalent of a Swiss bank account. No centralized institution controls it, eliminating the option to subpoena a bank. A digital "wallet" can be stored on a device the size of a thumb drive or memorized so there is no physical evidence at all. Alternatively, assets can be obscured through layers of transactions across multiple accounts that only a forensic accountant can discover the truth.

Traditional investment companies expansion into multi-purpose platforms has significantly complicated digital asset discovery. When a party uses a platform like Robinhood that offers both traditional investments and cryptocurrency, a bank statement showing a "$5,000 transfer to Robinhood" could represent stocks, cryptocurrency, or cash. Requesting all statements to be produced during discovery may then only reveal current holdings, rather than a complete transaction history. To fully understand asset origins, practitioners should request complete transaction histories and explicitly request cryptocurrency transaction records.

When practitioners suspect the opposing party holds cryptocurrency or other digital assets, they should include a request for production for "all digital assets/cryptocurrency transactions, including: purchases, sales, and transfers." Consider incorporating crypto-specific questions during depositions and requests for admissions, such as, "What types of assets do you hold in your Robinhood account?" and "Have you ever purchased cryptocurrency through ANY investment platform?"

After receiving discovery, practitioners should look for telltale signs—both obvious indicators like unexplained wealth or lifestyle changes and subtler patterns: trades at unusual hours, tech purchases for hardware wallets or mining equipment, round dollar amounts that could indicate crypto cashouts, transactions just below known reporting thresholds (as in under $600), and deposits and withdrawals that do not match stock dividend schedules or income patterns.

Sophisticated concealment tactics include bartering through online retailers. These individuals set up free cryptocurrency wallets, connect with cryptocurrency users on Reddit or other forums, purchase items on Amazon or similar platforms, and receive cryptocurrency in their virtual wallets in exchange for the retail items. This method leaves no direct bank or credit card trail that would typically reveal cryptocurrency transactions. Consequently, practitioners should consider requesting complete transaction histories from online retailers. This raises an important question: should discovery routinely include complete purchase histories from online retailers?

As digital assets become increasingly intertwined with everyday transactions, family law attorneys face new challenges in discovery. What once required only reviewing bank statements now may encompass transaction histories from dozens of platforms, implicating the limits of constitutionally protected privacy rights as they pertain to the civil discovery process. Attorneys must balance thoroughness with efficiency while navigating this evolving area of practice, where established precedent has yet to catch up with technological reality. **HN**

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Focus | *Family Law*

When Screenshots Speak Louder Than Words

BY ROBERT EPSTEIN AND TARAH HILL

In a world where nearly every moment is captured by a digital device, attorneys face the daily challenge of turning a client's phone gallery into persuasive evidence. Requests for texts, social media metadata, and even doorbell footage have become just as common in family law discovery as tax returns. But with these changes come complications. How can we effectively utilize this type of evidence? What is admissible?

Text messages remain one of the most frequent forms of digital evidence. Screenshots are easy to obtain but can be misleading when taken out of context or selectively altered. Lawyers should always request native format messages when possible, along with associated metadata such as timestamps or sender information, to confirm authenticity. Programs like "iMazing" are excellent for exporting large text chains with all the relevant data.

Modern messages are rarely just words. Emojis, GIFs, and memes have become shorthand for representing complex emotions and social cues. A thumbs-up emoji might signal agreement, sarcasm, or passive aggression, depending on the context and platform. GIFs (animated images) can convey tone, humor, or intent more clearly than words, while memes can serve as coded messages, combining cultural references and humor to mock or affirm specific ideas. In family law, these seemingly lighthearted symbols can carry enormous weight in cases involving harassment, alienation, or intent.

When presenting this type of digital evidence, lawyers must provide the context in which it was sent. Was the emoji sent in a cordial conversation or a hostile exchange? Does the meme reference a shared experience between the parties or a veiled insult? Judges may view such evidence skeptically unless its meaning is clear and relevant. Emojis and GIFs also carry hearsay implications and must be authenticated as part of the surrounding message or conversation. Practitioners should be prepared to argue relevance and to address Rule 403 concerns when opposing counsel challenges admissibility based on potential confusion or prejudice.

Smart home devices, such as Ring doorbells and security systems, have added a new dimension to litigation. These devices can record real-time video, audio, and entry and exit data that can corroborate or refute allegations made regarding disputes between the parties. To admit this type of evidence, attorneys must authenticate it through someone familiar with the device who can testify that the footage is accurate and unaltered. Practitioners should be mindful of audio recording laws. While Texas is a one-party consent state, the recording party must be a part of the conversation being recorded.

Geolocation data from smartphones or other devices can also be influential, particularly in instances where a party may not be where they are supposed to be. Location history from apps like Google Maps or Apple's Significant Locations feature can place a party at (or far from) a scheduled pickup or exchange of a child. This information is generally accessible directly from the device itself and can be authenticated through testimony. However, accuracy may be challenged, especially if location services were disabled or spoofed using VPNs. Attorneys should preserve original records and consider issuing subpoenas for data when necessary. Like all digital evidence, location data must be shown to be relevant and reliable.

Equally important is counseling clients on the ethical boundaries of collecting digital evidence. While it is appropriate to advise clients to preserve communications they lawfully possess, accessing a spouse's private accounts (yes, even if the client knows the password) can violate privacy laws and should be discouraged. It is also essential to instruct clients not to delete potentially relevant information, regardless of how damaging it may seem to be. Clients should be told to preserve all devices and content as-is and disclose any apps or settings that may affect data retention.

Technology evolves faster than courtroom norms, but the evidentiary framework remains grounded in the principles of relevance, authenticity, hearsay, and prejudice. As digital footprints become increasingly complex, lawyers must adapt by staying current on platforms, understanding how to preserve and challenge digital materials, and guiding clients through the process. When screenshots speak louder than words, lawyers must ensure they tell the whole story and that it's a story that the Texas Rules of Evidence allow the court to hear. **HN**

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Focus | Family Law

The Advantages of Low-Interest Mortgages in Divorce Proceedings

BY DANA C. PALMER

Asset division profoundly impacts our clients' futures. Currently, the average 30-year fixed mortgage rates hover around 7 percent as of July 2025. One extremely valuable, but commonly overlooked, misunderstood, and under-utilized asset is an existing low-interest mortgage. Many couples secured mortgages at historically low rates, often around 3 percent. Forcing a refinance during divorce to remove one spouse from the loan leads to significantly higher payments and long-term costs—often exceeding the total amount of child support.

This article illustrates the benefits of leaving such a mortgage intact, provides a real-world example of its advantages, debunks common misconceptions (including those related to buying a new home and credit scores), and underscores why this strategy is critical in modern family law.

Why Preserve a Low-Interest Mortgage?

When divorcing couples own a home with a joint mortgage, the default approach is to sell the property or require the retaining spouse to refinance. However, in a high-interest environment, preserving the existing low-rate mortgage—through options like loan assumption or keeping both names on the loan with protective agreements—offers substantial advantages.

- Lower Monthly Payments and Cash Flow Preservation: A low-rate mortgage means lower principal and interest payments, freeing up funds for other post-divorce needs such as child support and living expenses. Refinancing at today's rates increases payments by hundreds of dollars monthly, straining budgets.
- Reduced Total Interest Costs: Over the life of the loan, the interest savings are enormous. This preserves more equity for the retaining spouse and potentially allows for fairer asset division without depleting other marital resources.
- Financial Stability for Children: If children are involved, keeping the family home intact with affordable payments supports stability and avoids moving costs.
- Avoiding Refinance Hurdles: Refinancing requires qualifying based on one spouse's income and credit alone, which may not be feasible. It also incurs closing costs (typically 2-5 percent of the loan amount).

A Compelling Example: The High Cost of Refinancing

Alex and Jordan, divorcing after 10 years of marriage, borrowed $400,000 with a 2.9 percent fixed rate mortgage for 30 years the month they got married.

- Scenario 1 Preserve the Mortgage: Alex takes responsibility for the loan, keeping the 3 percent rate.. Monthly principal and interest payment: $1,265. Alex buys out Jordan's equity share ($50,000, assuming equal division after costs) via a separate loan or asset offset. Total interest over remaining 20 years: $105,000.
- Scenario 2 Refinance at Current Rates: Alex refinances at 7 percent. Monthly payment jumps to $1,936—an increase of $671 per month. Over 30 years (new term), total interest: $397,000. Alex pays an extra $241,000 in interest!

Common Misconceptions Debunked

- **Misconception: The Divorce Decree Automatically Removes** Mortgage Liability. Many believe that a judge's order assigning the home to one spouse ends the other's responsibility. Reality: Lenders aren't bound by divorce decrees; both names stay on the loan unless refinanced or assumed. If payments are missed, both credit scores suffer.
- Misconception: Keeping the Mortgage Ruins Your Credit for Buying a New Home. Departing spouses worry that staying on the old mortgage prevents qualifying for a new one. Reality: With proper documentation (e.g., decree showing the ex is responsible), lenders often exclude the old debt from debt-to-income ratios. However, if payments lapse, it can drop your score by 100+ points, complicating new financing.
- Misconception: Refinancing is Always the Safest Option. While it cleanly separates finances, it is costly in high-rate times. A properly drafted Agreed Final Decree of Divorce with Deeds of Trust and Real Estate Lien Notes can achieve similar protection without rate hikes.
- Misconception. You Can't Buy a New Home Until the Old Mortgage is Out of Your Name: Lenders evaluate your full financial picture. If the decree allocates the debt elsewhere and payments are current, you can often qualify for a new mortgage. A high joint debt load may require offsets like increased down payments.

Pro-Tips:

- **Necessary Tool: Mortgage Amortization Calculator.** Always analyze the existing mortgage numbers using a mortgage calculator so you can know the exact numbers for your clients. Dave Ramsay has one online that I prefer to use, but there are several free ones online. Know your numbers. Fighting for $100K of Child support while simultaneously paying $400K in additional mortgage interest is not only foolish, it also often prolongs negotiations.
- Prefer keeping money in the parties' pockets instead of giving it to banks. Don't help build skyscrapers that say "Bank of Not-Our-Client" on them.
- Protections: If a mortgage payment is 30 days late, that is when credit is damaged. So, make sure the non-retaining spouse keeps access to the mortgage account to ensure that the mortgage payment is timely made.
- Don't make your client house-poor. These deals are not for everybody—but for many clients, it's a huge advantage. **HN**

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Basic Tips for Family Law Witness Preparation

BY SUZANNE H. WOOTEN

Testifying is an interrogation, not a conversation. As such, the rules can be easy to understand, but hard to follow. Whether you are just starting a legal career or have been practicing law for decades, this article covers a few basic tips for preparing a witness to testify in a family law case.

Most witnesses are nervous about testifying. When you begin your preparation, remind the witness that *they* hold the truth regarding their testimony and that such information is important.

Instruct the witness to wait for the question to be completed before answering. Not only might they rush to an incorrect answer to the *actual* question, but the court reporter cannot transcribe two people talking at once. To prevent the issue, the witness may take a breath or a short pause before answering.

Remind the witness to answer only the question asked. For example: "Can you tell the Court what time it is?" If they answer "10:00 a.m.", INCORRECT. The answer is "yes" or "no". It is the interrogator's job to be specific and clear about the question and/or follow-up. Similarly, remind your witness not to elaborate beyond the question. If the question is about the time, do not explain how a watch is made.

Assure the witness that if they cannot recall or do not know the answer, as long as they are truthful, "I do not know" or "I don't remember" are acceptable answers. And, if they do not understand the question, they may say so. Further, let the witness know that there may be quiet moments between questions when they need to remain silent and wait for the next question.

For hearings, inform your witness that if they see you or opposing counsel beginning to stand or standing, it is a visual cue for them to wait to answer the question while an objection is being asserted. Additionally, not all witnesses understand what "overruled" and "sustained" mean when testifying. A simple recommendation is to explain that after the objection is stated, if the judge says "overruled", the O means Open your mouth and answer the question. If the judge says "sustained", the S means Silence and *do not* answer the question.

Resist trying to change the personality of a difficult witness. Do, however, explain to them how their demeanor could result in their testimony being lost on judge and/or jury. An aggressive, angry, argumentative, or arrogant witness can result in the judge or jury tuning them out entirely. Family law situations are upsetting and emotional, but you do not want the witness to be perceived as histrionic, dismissive, or condescending. Remind them that *how* information is delivered is important. Conversely, they should not behave like a wholly different person. The witness appearing dressed like a schoolmarm from the 1800s just might lose credibility when a photo of them topless in last month's biker magazine is offered into evidence.

Always inquire about known or suspected facts related to the witness that may be "bad" or damaging to the case. If you did not know that your husband/witness slept with his mother-in-law during the first year of marriage, that may be a smidge damaging to learn during cross-examination. Embarrassing or shameful facts need to be known, *in advance*, to prepare and evaluate damage control. In such a situation, a witness who takes responsibility for their actions is often perceived better than a defensive witness who denies the bad facts to the bitter end. However, remind them that for the love of all things good and evil, answer only the question asked!

A legal setting may be new to a witness. Make sure the witness knows where to sit (for deposition or the witness stand). A lost or confused witness is not a good first impression. For the specific courtroom, explain where the court reporter, judge, bailiff, attorneys, and parties will sit. If the witness has not been in the courtroom, use a diagram or photo of the courtroom to help them visually become more familiar with the location. Do not forget to tell them *where* the courtroom is located—no one wants a witness who is literally lost.

Instruct the witness to slightly turn their chair so that they can respond to the trier of fact rather than focusing on the attorney during questioning. The judge and/or jury needs to be able to *see* how they answer questions. If you know that a witness will have difficulty looking at the opposing side during cross-examination, have them look at a spot or person behind opposing counsel's table during the cross-examination when not looking at the judge and/or jury.

Above all, whatever rules and tips you have for a testifying witness, do not forget to go over them more than once to help them retain the information.

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Focus | *Family Law*

Collaborative Divorce in Texas. What Is It?

BY MELINDA H. EITZEN

Although collaborative divorce has been around a long time, many lawyers, especially outside of family law, are still confused about what it is and how it works. This article is intended to provide a basic overview of this alternative dispute resolution (ADR) process, which 27 states have adopted through the Uniform Collaborative Law Act, with Texas having enacted the statute in 2011.

What does the statute say, and how does this process differ from litigation? The statute requires no formal discovery. Meanwhile, a full exchange of information is required, but one does not have to ask for it. There is no formal request and no 30-day period to gather and object and reply.

To enter into the collaborative process, the parties must sign a Collaborative Participation Agreement (basically a contract) stating that they will comply with the statutory requirements, including full transparency regarding all information.

How does this process work logistically, if there is no formal discovery request? Although not required by the statute, neutral, collaboratively trained professionals often are involved in the collaborative cases. One such person is called a neutral financial professional (FP). That individual typically will send to the parties a list of documents to gather and then will post all of that gathered information to a portal that both parties and their lawyers can view. Typically, the FP then will build a spreadsheet of the estate.

How does this compare to discovery in litigation, and why is that a big deal? Imagine a situation in which Wife suspects that Husband has been divorce planning and has done something funny with the couple's money. She wants several years' worth of account statements from several accounts.

In the litigation scenario, Wife's lawyer drafts and sends to Husband a formal request for production of these documents. As Husband does not want to provide them, his lawyer only gives her a small sampling of the documents requested while filing objections together with his formal response. After a demand letter, Wife's lawyer files a motion to compel. Husband's busy lawyer is not available for any of the hearing dates provided, and the hearing is set only after great difficulty. The day of the hearing, Husband provides some additional information at the last minute, in a disorganized manner, making it difficult to tell what he has and has not produced. Some items allegedly do not exist or are too old to obtain from the financial institutions. At the hearing on the motion to compel, the judge agrees that some items are too old to be relevant and does not order those to be produced, but he does order the production of other documents. Husband still does not produce the documents as ordered or only produces some of them. Then he claims he has already produced these documents, while Wife's lawyer says his client has not received them. And the process goes on and on.

In the collaborative scenario, however, Wife tells the FP what she wants. The FP works with Husband to obtain the information, and/or works with Wife to determine if they can start with a smaller amount and then see, upon review, if a larger amount is actually needed.

The collaborative process, like mediation and other ADR processes, empowers people to make their own decisions about their divorce instead of a judge. The lawyers are dedicated settlement counsel, as required by the statute. In other words, if the case is not resolved in the collaborative process and the parties opt out and proceed to litigation, they have to replace their collaborative lawyers with new lawyers, who. cannot be affiliated with the prior counsel.

Why is this important and how is it different from a litigation case that is going to mediation? In litigation cases, which statistically also have a high settlement rate, the traditional approach to settlement is more of a comparison to the likely outcome at trial under the law. The lawyers are having to prepare for trial and hit trial deadlines, while contemporaneously trying to settle the case.

In collaborative cases, however, these lawyers are not trying the case. There are no trial deadlines to worry about while in the collaborative process. A notice is filed with the court that the parties are in the collaborative process, and the court is prohibited from setting for trial or dismissal for up to two years.

In collaborative cases, the parties can focus on creative problem solving instead of devoting attention to what the judge would or could do under the law. As a result, solutions that are specifically crafted for this situation can emerge. **HN**

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Special Recognition

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Sheppard Mullin Donates $25,500 to Support Equal Access to Justice

BY MICHELLE ALDEN

The Dallas Volunteer Attorney Program (DVAP) has long been a cornerstone of the Dallas legal community, ensuring that low-income individuals and families have access to the legal help they need. This year, Sheppard Mullin proudly deepened its support for this critical mission with a $25,500 donation to the Equal Access to Justice Campaign, reinforcing the firm's long-standing commitment to advancing justice for all, kicking off this year's Campaign, and making an impressive total of $75,500 donated by the firm since 2019.

"Equal access to justice is a responsibility of all lawyers—if we don't do it, who will?" said **Bill Mateja**, Governmental Partner at Sheppard Mullin and Immediate Past President of the Dallas Bar Association. "DVAP's work makes that responsibility a reality for all lawyers no matter where or what they practice, and we are proud to support it with both our time and our financial resources."


Robert Hough


Bill Mateja


Shane Trawick

Making a Tangible Impact

Sheppard Mullin attorneys have been actively engaged in DVAP's pro bono efforts, helping Dallas residents with a wide range of legal challenges:

- **Small Business Support**: Attorneys at the firm assisted local entrepreneurs like "Maria," who was launching a wellness business. By helping her secure trademark protections, Sheppard Mullin gave her the legal foundation to grow her business with confidence.
- **Consumer Protection and Public Benefits**: Through DVAP's virtual legal clinics, firm attorneys have helped clients fight back against abusive debt collection practices and resolve issues with essential benefits programs, allowing families to stay on their feet during difficult times.
- **Family Law**: Through DVAP's legal clinics, firm attorneys have helped clients pursue divorces from abusive partners, custody, name changes, and child support, helping to ensure the well-being of families.

"All of these efforts demonstrate why DVAP is so critical," said **Shane Trawick**, Real Estate Partner at Sheppard Mullin. "Whether we're representing a family facing eviction or helping a small business owner get off the ground, the work we do through DVAP is a catalyst for positive change in our community and truly changes lives."

Audrey Mercer, Associate at Sheppard Mullin, added: "Having volunteered with DVAP for years, I have seen firsthand how powerful its impact is on the community. The chance to stand beside clients in moments that truly change the course of their lives is undoubtedly the most rewarding parts of my practice."

A Firmwide Commitment to Service

In addition to hands-on pro bono work, Sheppard Mullin's donation helps ensure that DVAP can continue operating its virtual and in-person clinics across Dallas County, providing a lifeline to those who need it most.

"Pro bono is part of our culture," said **Hailey Beddell**, Associate at Sheppard Mullin. "DVAP gives our attorneys the chance to step in and make an immediate impact, supported by incredible training and mentorship. We're proud to pair that volunteer work with financial support that sustains DVAP's mission for the long term."

Looking Ahead

For over 25 years, the Equal Access to Justice Campaign has brought together law firms, individual lawyers, and the broader Dallas legal community to close the justice gap. With more than 25 percent of Dallas County residents living near the poverty level, the need for DVAP's services has never been greater.

"Sheppard Mullin is honored to be part of this effort," said **Robert Hough**, Advertising and Branding Partner at the firm. "Our financial support and our volunteer work are both expressions of the same belief: that access to justice should never depend on your income. DVAP embodies that ideal, and we are committed to helping it thrive."

The commitment of Dallas attorneys and the DBA to the Equal Access to Justice Campaign is impressive. Since 1997, the DBA and Legal Aid have joined forces to raise money for the program, with Dallas lawyers donating more than $21 million.

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

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

Focus | Family Law

When Custody Crosses Borders: Hague to UCCJEA

BY KATE PRATT

When one parent has abducted a child to the United States, the parent left behind may have two civil remedies for the return of their child; they are the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Convention) as implemented in the U.S. by the International Child Abduction Remedies Act, and the Uniform Child Custody Jurisdiction and Enforcement Act, implemented in Texas in Texas Family Code Chapter 152 (the UCCJEA). This article briefly discusses both laws: what they are; the advantages and disadvantages of each; and some practitioner tips for success in achieving a child's return.

While the Convention's principal purpose is to affect the return of abducted children, both the Convention and the UCCJEA are, in effect, anti-forum shopping statutes. Crucial to succeeding in a Convention suit for return of a child is establishing which country is the child's "habitual residence." If a petitioner can prove that their home country is the child's habitual residence and that they had parental rights they were exercising at the time of removal, then (absent defences) the court must order the return of the child. Unlike most family law proceedings, there is no "best interest of the child" test (BIOC), rather, the Convention is grounded in the premise that the courts of the child's habitual residence are the best forum to adjudicate rights and duties pertaining to the child. Convention countries must designate a central authority that handles the administration of Convention applications for the return of abducted children. The U.S. central authority is a branch of the State Department.

Unlike the Convention, the UCCJEA does not establish its own special administrative body; rather, parents are responsible for managing all aspects of their child's location and return. Most family law practitioners are familiar with the first section of the UCCJEA, which sets out bases for establishing which state's courts have jurisdiction to hear original and modification suits affecting the parent-child relationship. The latter part of the UCCJEA contains enforcement provisions. While the UCCJEA is primarily intended to regulate forum questions between sister U.S. states, Section 152.105(b) broadens the application of its enforcement provisions to foreign orders where U.S. notions of due process are met. There is no BIOC test in the UCCJEA, either.

Pros of the Convention:

- No need for a prior court order.
- Central authorities can assist with locating children, making arrangements for return, and finding lawyers (sometimes pro bono if need proved).
- A Convention application and any attached supporting exhibits are automatically admissible in evidence.
- Cases should be concluded within six weeks of filing return petition at court.
- Suit can be brought in state or federal court.
- No/limited discovery.
- While recommended, petitioners need not travel to the US to enforce their rights.

Cons of the Convention:

- Only petitioners living in U.S. "Convention" partner countries can use it.
- Only applies to children under 16.
- Several defences to return.
- Weaker ex-parte relief than UCCJEA.
- Cases can drag on, especially in federal court.
- Court might only order return of the child to a country, not to a specific person, sometimes raising issues following a successful outcome regarding whether a child will actually be returned, necessitating follow-up legal action.

Pros of the UCCJEA:

- Any petitioner with a court order meeting due process requirements can use it.
- Applies until child turns 18.
- Only defence to return is violation of human rights.
- Once served on respondent, hearing must be the first judicial day possible.
- Court can/may issue an ex-parte warrant to take physical custody of the child at time of service of the petition.
- Cannot be removed to federal court.
- No discovery.
- Courts can order return to a specific person, including to a parent with inferior rights under the relevant court order.

Cons of the UCCJEA:

- Must have a court order.
- No central authority assistance locating the child or an attorney.
- No statutory exemption to evidentiary rules, raising questions around notice periods/procedures for relying on foreign law and translations.
- Petitioner must travel to the U.S. to enforce rights.

Practitioner Tips

Where possible, file suit under both laws to avail your client of the advantages of each. Comprehensive advance planning is critical (including booking any court interpreters). Ideally, petitioners should travel to the U.S. prior to filing their petition for return to leverage the element of surprise. Immediately following final preparation with the client on their arrival, be prepared to file at court requesting all possible ex-parte relief, and for a hearing shortly thereafter. Ensure your client has considered travel documentation/arrangements for their child, and to request return of any passports in the petition. Cases are often short, intense, and hugely rewarding! **HN**

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Focus | *Family Law*

Making Nice for Better Results

BY P. AMBER PATHAK

Lawyers do not have the best reputation. We are often seen as combative, untrustworthy, or downright unpleasant. Unfortunately, I have encountered colleagues who are rude, difficult, and condescending. There is a reason that we are not well liked.

Let that opening paragraph land for a second. *How do you feel?* That introduction might have made you uncomfortable—and that's the point. How we frame our profession and ourselves matters.

Likely, your responses were not positive and full of excitement. When you begin a conversation or introduction negatively, it often impacts the outcome. Similarly, beginning a case with an adversarial mindset often limits the results you can achieve.

Get on the Phone to Set the Tone

Many of us are in the practice of getting on the phone with opposing counsel as soon as we are hired for a case. I often try to establish a mutual understanding with opposing counsel that neither of us may ever truly know exactly what happened in a case. I have found that keeping this in mind, myself, and reminding opposing counsel has helped in keeping conversations collaborative and agreeable.

Many lawyers thrive on debate. Some are driven by competition, others by the desire to be right—but bringing those instincts into every case can be counterproductive. Carrying these mindsets into our cases will not only result in more stress but can also lead to a worse result for our clients. Overall, I find it more effective to 'kill people with kindness' than to treat anyone with disrespect. If you need help or tips on how to do that, I highly recommend reading some of the books by Bill Eddy, LCSW, Esq.

The Other Lawyer Isn't the Enemy

Family law cases involve intense emotions, hurt feelings, and sometimes difficult personalities or mental health challenges. The most challenging cases may also involve abuse. Many parties do not get along and are unlikely to reach agreement on their own.

I will always remember my first complex case as a family lawyer. It was a challenging case with difficult facts, but that is not what keeps the case earmarked in my brain. *I will never forget how the other lawyer treated me.* It was difficult to discuss even minor issues, and larger issues almost always required court intervention. I truly believe we would have achieved a better result for the parents and the children if we had been more collaborative rather than adversarial.

Focus on Resolution

I recently completed training in basic and advanced family law mediation skills. During my courses and afterward, I was repeatedly told that "it is difficult to be a mediator and litigator at the same time." While I agree, I wonder why we do not approach each case from the mindset of a mediator.

It is safe to say over half of legal cases get resolved by some form of agreement, whether that be from an informal settlement process, mediated settlement agreement, or a plea bargain. If the statistics tell us anything, it is that there is a resolution to be had in a majority of cases.

Try setting aside the boxing gloves for a moment. What would happen if you were to approach opposing counsel with a focus on resolution instead of who is right, who the bad guy is, or who is the better lawyer? What if you outlined the issues most important to each client and started a brainstorming session with opposing counsel on creative ways to satisfy both parties' needs and wants? *Would you really lose anything by being nice?*

The Lawyer's Creed

I am sure you are familiar with the Texas Lawyers' Creed. When was the last time you read it? While I had consulted portions throughout my career—usually when frustrated by another attorney's conduct—I had not read it in full since I was newly licensed. If I had to choose one sentence from the Texas Lawyers' Creed that resonates with the heart of this article, it would be—"I can disagree without being disagreeable."

If you take nothing else from this article—I implore you to look up the Texas Lawyers' Creed and read it again. Please, go out of your way to be nice to your fellow lawyers.

We can change the perception of our profession. It starts with how we treat each other. You can zealously advocate for your client while also making nice with the attorney on the other side of your case—I bet it will even lead to better results. **HN**

Attorney Amber Pathak may be reached at ppathak.law@gmail.com.

Focus | *Family Law*

Formula for Success: Tips from a Baby Family Attorney

BY MORGAN WHISENHUNT

Many new ("baby") attorneys ask senior attorneys how long it took them to feel competent practicing law. The answers vary—some say a few years, others five or more. A founding partner once told an intern he still didn't know. The period between passing the bar exam and sufficiently practicing law is marked by an odd duality: the dizzying sense of knowing so much yet understanding so little.

This tension is especially acute in family law. New attorneys must quickly apply abstract legal principles to emotionally charged cases involving children, trauma, and personal conflict. The learning curve is steep, and it often feels like legal education falls short in preparing us for this reality. From my first year practicing family law, three key lessons stand out.

Tip One: Lead with Logic, Stay with Heart

One of the most immediate challenges is reconciling black-letter law with the emotional complexity of family law cases. While the law aspires to consistency and objectivity, the facts in family court rarely fit neatly into doctrinal categories. Clients often expect outcomes grounded in moral fairness, not procedural rules. When legal results diverge from what feels just, especially in custody disputes or family violence cases, new attorneys can find themselves struggling to make sense of that gap.

This tension creates a tendency toward extremes. Some new lawyers lean heavily into emotional advocacy, investing deeply in their clients' experiences and attempting to achieve outcomes that align with a personal sense of justice. Others, often after their first few losses, respond by pivoting hard in the other direction, embracing purely logical, dispassionate reasoning to shield themselves from disappointment or burnout.

Neither approach, in isolation, is sustainable. Family law requires a deliberate balance between empathy and analysis. An attorney who becomes too emotionally involved may struggle to maintain professional boundaries or manage client expectations. On the other hand, a purely procedural mindset may overlook the interpersonal dynamics that often inform what is truly in the best interest of a child or family.

This balance is not something law school teaches explicitly, but it becomes critical in practice. For example, knowing the legal standard for modifying a possession schedule is essential. But understanding how to manage a client's panic when they feel like they are losing time with their child is equally important. New attorneys must quickly develop soft skills: active listening, de-escalation, and the ability to clearly communicate realistic expectations in high-stress situations.

Tip Two: Ask Why

Procedural efficiency matters, too. In the first months of practice, new lawyers are often surprised by how much of their day involves logistics—scheduling hearings, preparing binders, managing deadlines, confirming service, and drafting documents that are as much about clarity as they are about correctness. Learning to manage the flow of a family docket, especially in high-volume courts, requires attention to both process and nuance.

Mentorship plays a central role in navigating this adjustment. Experienced attorneys offer more than just legal knowledge; they provide examples of composure under pressure, thoughtful negotiation tactics, and practical advice for the unexpected curveballs that family law often throws. Observing how a seasoned attorney handles a contentious hearing or responds to inflammatory pleadings can shape how newer attorneys approach similar challenges.

At the same time, newer attorneys bring a valuable perspective. Because we are still close to law school, we may notice gaps between legal doctrine and practical outcomes more acutely. That awareness can spark useful questions and creative strategies, particularly when collaborating with more experienced practitioners. It is not unusual for a "baby lawyer" to ask why something is done a certain way and receive the answer, "Because that's how it's always been done." Sometimes, that prompts rethinking outdated habits or refining practice-wide systems.

Tip Three: Advocate Without Absorbing

It is also important for new attorneys to recognize the emotional toll of this work. Family law cases often involve clients in crisis—people going through what may be the most stressful, uncertain period of their lives. The emotional weight of their experience, and the responsibility of being their advocate, can easily follow an attorney home. Developing habits to maintain professional detachment, whether through mentorship, therapy, journaling, or boundaries around after-hours communication, is key to avoiding early burnout.

Ultimately, the early stages of a family law practice are about more than just building competence in statutes and procedures. They involve learning how to practice with both efficiency and compassion, how to advocate without absorbing, and how to recognize that emotional intelligence is not a liability—but neither is it a substitute for preparation.

The practice of family law doesn't reward cynicism, but it does require realism. Attorneys must learn to hold space for both legal clarity and human complexity. For those entering the field, developing that ability early on may be the most important survival skill of all. **HN**

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Focus | *Family Law*

Why Unmarried Couples May Need a Cohabitation Agreement

BY CAROL WILSON

Marriage isn't for everyone. For various reasons, a couple may decide they don't want to get married, but they do want to live under the same roof. That is all well and good—until it isn't.

Many long-term unmarried couples, especially those with significant assets, mistakenly believe they are immune to financial disputes upon separation. For Texas couples living together in long-term relationships, particularly if one or both partners have significant or complex assets and liabilities, a non-marital cohabitation agreement may be advisable.

Is It or Isn't It a Common-Law Marriage?

Long-term couples living together in Texas face complications due to the state's recognition of common-law marriage. It is not out of the question for such couples to be mistaken as common-law married—or for one of the partners to claim the relationship was a common-law marriage because it financially benefits them to do so.

Under Texas Family Code §2.401, a common-law marriage (also known as an informal marriage) must meet three criteria:

1. Both parties must have a mutual understanding that they are married to each other.
2. They must live together as spouses in Texas.
3. They must represent themselves to others as married.

All three of these elements must be present for a common-law marriage to be recognized in Texas, **unless the couple has filed a declaration of informal marriage**. A declaration of informal marriage formalizes your union in the eyes of the law, providing a clear record of your marital status. The County Clerk has the form, and it must be filed with the County Clerk in the county where you live.

Already married? You can't be a party to a common-law marriage and be ceremonially or common-law married to someone else at the same time.

The Need for a Cohabitation Agreement

Even if neither partner believes the relationship is a common-law marriage, a long-term couple that lives together may want to consider entering into a non-marital cohabitation agreement. It is a legally binding contract that outlines the financial and legal rights and responsibilities of two unmarried individuals living together. It can provide crucial clarity and protection, especially in situations where:

- Significant financial shifts occur: If one person is about to receive a substantial sum of money—whether it is an inheritance, a personal injury settlement, a large signing bonus, or the liquidation of significant stock options—a cohabitation agreement can protect those assets from potential future claims by the other partner.
- New business ventures of one person: If one partner starts or invests in new business ventures, that person may want to make it clear that the new business, both the profits and the possible losses, are that person's alone, not the joint property of the two people living together.
- Joint property ownership exists: When unmarried couples purchase a home together, they usually become joint owners. Without a clear agreement, the default assumption is 50/50 ownership, including both assets and liabilities, such as the mortgage, repairs, and maintenance. This can lead to significant disputes, especially during separation.
- One partner wants to leave the relationship: If one partner decides to end the relationship, a cohabitation agreement can prevent costly and contentious legal battles. It provides a roadmap for dividing assets, addressing debts, and determining other important matters, such as pet ownership.

Why You Need Legal Counsel

Drafting a comprehensive and enforceable cohabitation agreement requires careful legal expertise. An experienced family law attorney can:

- Help you understand the legal implications of cohabitation and the importance of a well-drafted agreement.
- Ensure that the agreement accurately reflects your intentions and safeguards your financial future.
- Help you anticipate potential conflicts and draft provisions to address them proactively.

Granted, negotiating and executing a non-marital cohabitation agreement isn't romantic. But particularly if their long-term plans do not include marriage, it is a smart move for those looking to avoid or minimize future litigation and legal fees. **HN**

Carol Wilson, of Law Office of Carol A. Wilson, PLLC, is Board Certified in Family Law by the Texas Board of Legal Specialization. She can be reached at carol@cawilsonlaw.com.

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Interested in sharing your legal knowledge and expertise with your colleagues?

The CLE Committee is looking for speakers and hot topics for the Wednesday Workshop programs it holds throughout the year. Please submit a short bio, title, and 2-3 sentence description of your presentation to Araceli Rodriguez at arodriguez@dallasbar.org. Submissions will be discussed at monthly CLE Committee meetings.

Focus | *Family Law*

Family Law Issues in Probate or Federal Court

BY LAWRENCE J. PRAEGER

In Texas, family law cases are heard either in a county or district court of general jurisdiction. Some larger counties, however, have specialized family law courts. Dallas County, for example, has seven family law district courts. These courts hear exclusively family law matters, including divorce, child custody and support, termination of parental rights, and parentage/paternity cases. The family law courts also hear modification and enforcement of these orders.

Specialized courts have a number of advantages. Among the more important are standing orders that eliminate the need to run to the courthouse and get an injunction when a case is filed; specialized procedural rules and a requirement for producing documents at an initial hearing, which often occurs prior to the answer date; avoiding a re-set because another type of case takes priority; judges who generally have a greater knowledge of community property law than is typically found in courts of general jurisdiction; and a more predictable judiciary because a practitioner can observe how a judge generally rules on a larger number of similar fact patterns.

Nevertheless, sometimes the relative comfort of practicing in a specialized court is no longer available, although the issue is solidly a family law matter—for example, where a client alleges that she is the spouse by informal or common law marriage of an individual who died intestate. The family law practitioner is then in the position of having to address the existence of an informal marriage in probate court. An heirship determination is generally decided by the judge as a matter of law. The Estates Code (Section 55.002), however, states that in a contested probate or mental illness proceeding, a party is entitled to a jury trial, just like any other civil matter. Upon request, a probate court will submit to a jury the issue of the existence of an informal or common-law marriage prior to hearing the heirship determination.

Issues of marriage, divorce, and property division are generally considered matters of state law. Nevertheless, family law practitioners can find themselves in federal court due to the operation of federal legislation—specifically, the Employee Retirement Income Security Act of 1974 (ERISA). ERISA governs private-sector retirement and health plans and outlines standards for plan administration, fiduciary responsibilities, and participant rights in private plans. Corporations, many of which are multistate or multi-national, have developed rules for employment benefits. These rules are not required to mirror the particular state law where the employee is located. For example, although Texas does not recognize domestic partnerships, some private corporations recognize such unions for the purpose of awarding employment benefits.

Thus, a client who unsuccessfully alleges in probate court that she is a common-law spouse may still have a remedy if her "partner" had been an employee of a corporation that awards benefits to a domestic partner or spouse. In that situation, she may proceed under ERISA, which requires benefits to be distributed in accordance with the rules, definitions, and regulations of the employer's plan.

The determination of a domestic partnership is made by the employer's Plan Administrator, who often may be in another state. If this determination is contested, a Plan Administrator and/or insurance company—if life insurance proceeds are an issue—will address this situation by filing an interpleader action and placing the funds in the registry of the federal court in the district where the decedent last resided. The federal district court will then hear whether the Plan's administrative determination of domestic partnership was proper and whether the individual qualifies under the terms of the Plan. What started as an interesting informal marriage case in family district court therefore eventually may migrate to the probate court and potentially even to the U.S. district court. **HN**

Lawrence J. Praeger, of the Law Office of Lawrence J. Praeger P.C., may be reached at lpraeger@praegerlaw.com.

Column | Ethics

Navigating HIPAA Compliance in Texas Family Law

BY JORDAN WATSON

Amidst the chaos of family law cases, adherence to the Health Insurance Portability and Accountability Act (HIPAA) can seem like just an additional hoop to jump through in ethically representing clients. However, HIPAA compliance is absolutely necessary to protect the confidentiality of clients and their Protected Health Information (PHI). Understanding how to handle this information is crucial—not just for compliance, but for the effective representation of your clients.

Receiving PHI

The first step in handling PHI is obtaining it legally. When requesting PHI from a client, be sure to determine and request only the specific health information necessary for your case. This requires a keen understanding of the issues at hand, whether they involve mental health evaluations, substance abuse treatment records, hospitalization records, diagnoses, prescription records, and other health-related issues. Once you identify the needed information, obtaining a valid authorization from your client is the next crucial step.

In Texas, attorneys are considered covered entities under HIPAA, which means they must adhere to strict guidelines when acquiring PHI. This involves obtaining a valid authorization compliant with both federal and state regulations from the client. The authorization must be in writing, signed, and dated by the client or their legal representative, and it must specify the information to be disclosed, the purpose of such disclosure, and the expiration of the authorization. Remember, certain types of information, such as mental health or substance abuse records, require additional specificity in the authorization.

Producing and Requesting Data in Discovery

Once you have the PHI, the next challenge is producing it during discovery. When responding to discovery requests, ensure you have the proper authorization to disclose your client's PHI. If the opposing party requests your client's PHI, it is essential to evaluate its relevance and assert any applicable privileges so as to avoid unnecessary exposure to sensitive information. Seeking a discovery protective order can further safeguard your client's information when necessary. Additionally, PHI should only be sent using a secure method.

When it comes to requesting PHI in discovery, the key is to narrowly tailor your requests. Avoid broad, sweeping requests for "any and all medical records," as this can lead to the unnecessary accumulation of sensitive data that will not lead to relevant information. Instead, focus on obtaining only the PHI pertinent to your case, thereby minimizing the risk of improper disclosure and enhancing your ability to argue the legitimacy of your request if needed.

If the opposing party refuses to sign an authorization, you may need to file a motion to compel the release of the information. This involves requesting the court to overrule any objections and require the execution of an authorization or a court order compelling the healthcare provider to release the information.

Sharing Data with Other Professionals

Family law cases often require collaboration with other professionals, such as expert witnesses, consulting experts, or court-appointed evaluators. Before sharing PHI with these individuals, ensure you have the necessary authorization or court order. This is particularly important when new parties become involved in the case, as initial authorizations may not cover them. It is imperative to ensure that your initial authorization or court order covers these disclosures. If not, you must obtain a new authorization or court order to share the information legally.

Using Data in Court

Using PHI in court requires careful consideration. Whether you're filing pleadings or presenting evidence, you must have explicit authorization to disclose the information to the court. This may involve obtaining a new authorization or court order if the existing one does not cover the intended use. Remember, improper disclosure can lead to severe penalties, so diligence is key. In some instances, you may need to file a motion requesting that the evidence be sealed to prevent the information from becoming part of the public record. This step is vital in protecting your client's privacy and ensuring compliance with HIPAA regulations.

Storing and Disposing of PHI

Proper storage and disposal of PHI are also critical components of HIPAA compliance. Hard copies of records should be stored securely, and electronic records must be protected with appropriate security measures, such as password protection and secure networks. Once a case concludes, you should either return or destroy the PHI to prevent unauthorized access.

Conclusion

HIPAA compliance in family law cases is a complex but essential aspect of practice. By understanding the requirements for obtaining, producing, sharing, and using PHI, attorneys can protect their clients' privacy while effectively managing their cases. As the legal landscape continues to evolve, staying informed and vigilant about HIPAA compliance will ensure that you remain on the right side of the law and maintain your clients' trust. **HN**

Jordan Watson is an Associate at Epstein Family Law, P.C. She can be reached at jordan@epsteinpc.com.

Professionalism Tip

"I will always be conscious of my duty to the judicial system."
Tex S. Ct. Order enabling the Creed.

Find the complete Creed online at https://rb.gy/7h7kkb.

Provided by the Morris Harrell Professionalism Committee

DVAP's Finest

KARLA PIZARRO

Karla Pizarro is a real estate associate at Holland & Knight LLP.

1. What types of cases have you accepted?
I primarily assist clients with divorce matters. As a real estate and hospitality attorney, I also handle leasing and contract-related issues.

2. Describe your most compelling pro bono case.
One of my clients experienced domestic abuse during a significant part of her marriage. After years of separation, she was finally ready to divorce her spouse. Although several years had passed, it remained an emotionally challenging time to navigate. Knowing that we could help her legally end the relationship, providing her with a sense of freedom and closure served as a powerful reminder of the profound impact a law degree can have on someone's life.

3. Why do you do pro bono?
Most people need an attorney at some point in their lives. I take on pro bono cases to assist individuals who might otherwise lack access to legal representation.

4. What impact has pro bono service had on your career?
Since all areas of law are interconnected and often overlap, taking on pro bono cases outside my usual field of practice has deepened my understanding of common issues in other areas that intersect with my work.

5. What is the most unexpected benefit you have received from doing pro bono?
A few of my pro bono cases have involved Spanish-speaking clients, and as Spanish is my first language, I have thoroughly enjoyed the opportunity to practice my legal Spanish.

Pro Bono: *It's Like Billable Hours for Your Soul.*

To volunteer or make a donation, call 214/748-1234, x2243.

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Dallas Volunteer Attorney Program

Bad Hackers Gone Good: Ethical Hacking as a Solution

BY KATE RUMSEY AND MICHAEL SUTTON

Our daily newsfeeds are peppered with startling reports of new and emerging cyberattacks that compromise highly sensitive information, such as personal information or medical data. Such attacks are significant not only due to the nature of the information at issue, but also because responding to cyberattacks, related litigation, and government investigations often comes with hefty price tags. Ethical hacking (also referred to as "white-hat hacking" or "good-faith hacking") presents a potential solution to mitigate cyberattacks.

What is Ethical Hacking?

Ethical hacking is a practice through which a party intentionally and proactively probes computer systems, networks, or applications for security vulnerabilities. The goal generally is to identify and remediate vulnerabilities before they can be exploited. Ethical hacking comes in a variety of forms, such as through formal engagement of vendors to facilitate penetration testing, as well as through programs that offer financial rewards to private parties who report vulnerabilities. In effect, hackers can be leveraged to promote security rather than to exploit vulnerabilities.

Notably, many of the largest technology companies and social media organizations have implemented ethical hacking programs, often referred to as "bug bounty programs." These programs often make good business sense, as average payouts for identified vulnerabilities ordinarily pale in comparison to the average cost of breaches, which can quickly rise into the millions of dollars.

Legal Hurdles of Ethical Hacking

As sensitive information is frequently at issue in facilitating ethical hacking programs, parties wishing to implement such programs must overcome a range of legal hurdles. We address some of the most significant hurdles below.

Consumer Privacy & Protection Laws. Most states have adopted consumer and medical privacy laws that regulate the collection and use of personal information and frequently impose reporting and remediation obligations when such personal information is compromised. Similarly, deceptive trade practices laws at both the state and federal levels are used as the basis for many privacy-related enforcement actions and lawsuits, including actions by state Attorneys General. There is active enforcement in this area, with regulators frequently arguing that misrepresentations or omissions of material facts in privacy policies constitute deceptive acts or practices. In general, state and federal deceptive trade practices laws require companies to adhere to their posted privacy policies, avoid making any material omissions, and refrain from collecting or using information in ways that deviate from what consumers would expect based on the company's privacy policy. As a result, parties should be mindful to ensure that their ethical hacking programs comply with applicable laws as well as posted privacy policies.

HIPAA. The Health Insurance Portability and Accountability Act of 1996 (as amended) and its implementing regulations (collectively HIPAA) strictly regulate the use and disclosure of protected health information (PHI) by certain regulated parties, including covered entities and business associates. It is critical that HIPAA-regulated parties take steps to ensure compliance with HIPAA, such as by ensuring that ethical hackers are only allowed to access PHI for a permissible purpose, executing business associate agreements with formally engaged parties that qualify as business associates, and working to limit the exposure of PHI to the minimum amount necessary, among other measures. Failure to ensure that an ethical hacking program is conducted in compliance with HIPAA could result in significant civil penalties. Similarly, HIPAA's criminal statutes prohibit knowingly obtaining PHI, with increased penalties if the offense is committed with the intent to sell, transfer or use PHI for "commercial advantage, personal gain, or malicious harm." 42 U.S.C. § 1320d-6.

Computer Fraud and Abuse Act. Under the Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030, federal law prohibits knowingly accessing a computer "without authorization or exceeding authorized access." Ethical hacking involves, by definition, parties exceeding authorized access in most contexts. In response to increasing instances of ethical hacking, the U.S. Department of Justice (DOJ) revised its guidelines for bringing charges under Section 1030, instructing prosecutors to decline charges if the individual's conduct constituted "good faith security research." *See* Justice Manual 9-48.000. The DOJ defines "good faith security research" as activities "designed to avoid any harm to individuals or the public." Extorting businesses through security research, however, is not "good faith security research." As a result, an ethical hacker whose purpose is to help regulated parties with protecting PHI, risks running afoul of federal criminal statutes, and is shielded only by current DOJ policy.

Conclusion

It is critical that parties take cybersecurity seriously. Ethical hacking presents a tremendous opportunity to identify and address vulnerabilities before they can be exploited to detrimental effect. Thoughtful consideration of the legal hurdles discussed above is vital to ensuring that ethical hacking is conducted in a compliant and effective fashion. **HN**

Kate Rumsey is Special Counsel with Sheppard Mullin and can be reached at krumsey@sheppardmullin.com. Michael Sullivan is an Associate at the firm and can be reached at msutton@sheppardmullin.com.

Focus | *Family Law*

Artificial Intelligence in the Real-Life Family Law Practice

BY CARMEN EIKER AND ANNA LONG

Family law practitioners know that managing client expectations is a large factor in the attorney-client relationship. Armed with Artificial Intelligence (AI), clients are bringing new issues and challenges to that relationship. Specifically, family law clients are now more likely to have unrealistic expectations about AI's capabilities to streamline their cases and reduce legal costs.

To address this issue, attorneys should educate clients from the outset of representation about AI's limitations in the legal practice and establish clear parameters for its use to maintain a productive and cost-effective attorney-client relationship.

AI's Limitations in the Legal Field

While the informed and ethical use of AI may be beneficial in many scenarios, it is not an effective replacement for an attorney or for legal research. Although AI can quickly analyze and summarize large quantities of information, it can also frequently produce inaccurate answers. When analyzing statutes or cases, AI systems have been shown to "hallucinate" or otherwise misstate relevant case law and citations. Courts have handed down numerous sanctions to attorneys across the nation recently for relying on inaccurate AI-generated legal content. Notably, as courts expand their stances on disclosing the use of AI by any party, pro se litigants are also at risk of sanctions for hallucinated citations and the undisclosed use of AI in work submitted to a court.

Beyond simply misstating the law, AI is also limited in its factual understanding of the world. Because AI systems are often trained on large amounts of data, its ability to understand, interpret, and connect facts is limited by the data and algorithms fed to it. In contrast, an attorney may ask for additional information and rely on their body of experience before forming an opinion. Also, AI may confidently report an incorrect answer, inadvertently omit pivotal information, or otherwise mischaracterize the truth—potentially convincing a client or attorney of a false reality.

Addressing a Client's Use of AI

As AI becomes part of everyday life, a client may also independently turn to it in a self-help effort. This may manifest as a client asking an AI system to quickly locate relevant case law, draft a memorandum for the attorney to use, or create a motion to be filed with the court. Meanwhile, a zealous pro se opposing party may feel compelled to use AI for the same legal tasks in an attempt to level the playing field. Whether the AI-generated work is from a well-meaning client or not, the results are often voluminous, single-spaced documents filled with near truths. The attorney on the receiving end of these reports is subsequently burdened with the time-consuming task of deciphering the truth of both the law and facts cited within the document—potentially resulting in increased fees to the client.

In these situations, and in others ever more likely to arise, the attorney can attempt to dissuade the client's unbridled reliance on AI from the outset of the representation. The client may genuinely not recognize the dangers of the unchecked use of AI in the course of legal representation and may not be aware of the ethical duties of attorneys in asserting claims and the legal basis for them. It is our responsibility as attorneys to explain several key points: the duty to disclose the use of AI, as applicable, within the client's jurisdiction; the duty to not present frivolous or baseless claims; and the potential confidentiality risks of sharing information with an AI system. Practitioners should also highlight the cost breakdown of either a client or a pro se opposing party using AI throughout a legal matter. These discussions can be memorialized as a specific category in the letter of engagement.

Protect Your Practice and Address Client AI Use Now

AI is not the future—it is the present—and possibly the biggest single changemaker in our lifetimes, including our family law practices. As it continues to evolve, as do the court rulings on its use, so must our practices in order to address its real-life impact on our services and our professional relationships with our clients. **HN**

Carmen Eiker is board certified in Family Law and Civil Trial Law and is Of Counsel at Carrington Coleman. Anna Long is an Associate at the firm. They can be reached at ceiker@ccsb.com and along@ccsb.com, respectively.

Join the Texas UPL Committee

The **Unauthorized Practice of Law Committee** (UPLC) is comprised of nine volunteers who are appointed for three-year terms. The UPLC is authorized to investigate and eliminate the unauthorized practice of law. Members of the UPLC volunteer to help with cease-and-desist letters and injunction lawsuits. Serving on this committee is an excellent opportunity to get involved, network, meet people, and develop business.

Sign up at https://buff.ly/3E8qadk

DBF Confirms Commitment to Sarah T. Hughes Scholarship

STAFF REPORT

The Dallas Bar Foundation (DBF) is pleased to confirm its long-standing commitment to the Sarah T. Hughes Scholarships and the legacy of Judge **Sarah T. Hughes**. In June, the Board of Trustees unanimously approved a Resolution on the Sarah T. Hughes Scholarships in the interest of ensuring the longevity of the scholarship program.

Judge Sarah T. Hughes devoted herself to improving the rights of others for more than half a century. She served in the Texas Legislature from 1930 to 1934. In 1935, she became the first woman to become a State District Judge in Texas at a time when women were not allowed to serve on a jury. Judge Hughes was re-elected and remained at that position until 1960. She was then appointed as a U.S. District Judge in 1962 by President John F. Kennedy and on November 22, 1963, Judge Hughes was called upon to administer the oath of office to Lyndon B. Johnson after the assassination of President Kennedy, a duty usually performed by the Chief Justice of the United State Supreme Court.

It is with this backdrop that the Board of Directors highlighted the qualities of determination, resilience, and a strong sense of purpose as important criteria to be considered in the selection of scholarship recipients. The Sarah T. Hughes Scholarship will enable talented law students to obtain a legal education in our community with the purpose of expanding access and opportunity for individuals whose experiences and perspectives are not widely represented in the legal community of North Texas. Sarah T. Hughes embodied these characteristics in her non-traditional path to attending law school and throughout her career.

The Dallas Bar Foundation has awarded scholarships to deserving students attending SMU Dedman School of Law since 1981. In 2015, the scholarship program was expanded to include students attending UNT Dallas College of Law and Texas A&M University School of Law. There have been 78 Hughes Scholars selected since 1981, which includes five scholars currently attending law school. The 2025 Hughes Scholars will be selected this fall.

Our annual fund-raising event benefitting the Dallas Bar Foundation, *An Evening With Peter Baker and Susan Glasser*, will be held on October 22, 2025. This will be the 15th year for this event with entertaining guest speakers presenting on a variety of topics. Sponsors will generally support the Dallas Bar Foundation's mission but may also elect to specifically support the Sarah T. Hughes Scholarships with their donations.

The Dallas Bar Foundation is a 501(c)(3) non-profit organization focused on empowering both the existing and future Dallas legal community through educational and charitable initiatives. The Foundation provides scholarships, clerkships, and educational opportunities to support the next generation of lawyers and provides grants which support charitable legal initiatives to improve the lives of others utilizing the justice system.

We believe that the Sarah T. Hughes Scholarship helps create cycles of success in our community from which we all benefit. The scholarship program has allowed many outstanding law students, many who are first generation college graduates, to complete an education they would have previously thought beyond reach.

Gabe Vazquez, 2025 Dallas Bar Foundation Chair and Hughes Scholar, stated that his ability to serve as chair of the foundation is a privilege and an opportunity for him to continue giving back to the Dallas Bar Foundation in a meaningful and personal way.

"I look forward to working with the leadership of the Dallas Bar Foundation to ensure the legacy of Judge Sarah T. Hughes continues to be honored and realized in those students selected to receive this life-changing scholarship."

For questions or more information, contact Elizabeth Philipp, DBF Executive Director, at (214) 220-7487. **HN**

Victor Vital – DBA Trial Lawyer of the Year

CONTINUED FROM PAGE 1

Lawdragon 500 Leading Litigators in America, *Chambers USA*, *Texas Super Lawyers*, *and D Magazine's* Best Lawyers in Dallas, among others.

He is a frequent speaker, author, and educator on trial strategy and high-stakes litigation, and he continues to be a sought-after voice on major courtroom developments and matters.

But beyond the awards and victories, Victor's career reflects a deeper commitment to the ideals of fairness, advocacy, and justice.

"Victor embodies the lawyer's lawyer. His trial work includes both criminal and civil dockets, demonstrating his versatility. His easy smile and congenial demeanor do not negate his fierce representation for his clients, even when he is court-appointed. Victor represents the best aspects of a trial lawyer. As I've worked with Victor in various aspects of board service over the years, he brings that same analytical mindfulness in every aspect of reviewing issues for the best outcome," said DBA President **Vicki Blanton**.

Winning Trial Lawyer of the Year is not just a milestone—it's a testament to a career built on purpose, preparation, and passion. And for that college kid who once dreamed of being in the courtroom, it's the kind of story even *L.A. Law* couldn't have scripted better.

The DBA congratulates Victor Vital on being named the 2025 DBA Trial Lawyer of the Year! **HN**

Jessica D. Smith is the DBA Communications/Media Director. She can be reached at jsmith@dallasbar.org.

Focus | *Family Law*

Navigating Divorce Financially: Strategies for Asset Division

BY MARK SPALDING

Divorce is rarely just an emotional process. For most, it is also a financial turning point that can define a client's long-term well-being. When dividing property, family lawyers focus on dividing assets equally, fairly, and in accordance with the law. "Equal" on paper, however, may not translate to "equal" in practice when taxes, liquidity, cash flow, and future financial needs are considered.

In my work as a financial advisor, and previously as a family lawyer, I have seen firsthand how divorce outcomes can dramatically improve when legal expertise and sound financial planning are combined. With that in mind, here are some practical strategies for achieving equitable divorce settlements while protecting your clients' financial futures.

Not All Assets Are Created Equal

Divorce often begins with listing and valuing the marital estate: real estate, investment accounts, retirement plans, business interests, and more. It is critical to recognize that different assets carry different long-term implications, and what benefits one spouse may not benefit the other.

A $500,000 residence and a $500,000 401(k) may appear equal in value but function very differently. The residence may come with a mortgage, maintenance costs, and no liquidity, while the 401(k) is tax-deferred and potentially subject to penalties if accessed early. Similarly, privately held business shares may be illiquid, hard to value, or subject to market volatility.

Achieving a fair division starts with current value, but understanding an asset's true worth means accounting for tax consequences, affordability, liquidity, growth potential, and embedded liabilities. Encourage clients to look beyond the dollar figure and evaluate the after-tax, net value of each asset.

Mind the Tax Traps

Taxes can significantly alter the real value of a settlement. Appreciated assets like real estate or investment accounts may trigger capital gains taxes when sold. Retirement accounts may carry taxes and early withdrawal penalties. Clients may also lose valuable deductions or credits post-divorce, especially those related to dependents or mortgages.

Even settlements that appear equal can lead to unequal outcomes. Clients should consider working with a CPA to run hypothetical post-divorce tax returns. Partnering with a financial advisor experienced in divorce and complex property division can offer significant value when stress-testing proposed settlements.

Handle Retirement Accounts With Care

Retirement assets are often a significant part of the marital estate and can be complex. Help clients understand the difference between traditional and Roth accounts, especially regarding tax treatment. They should also consider the risks of borrowing or withdrawing funds early to furnish immediate cash needs. Short-term liquidity should not jeopardize retirement security.

Remind clients to update beneficiary designations in retirement accounts, pensions, or defined benefit plans. For older clients, Required Minimum Distributions (RMDs) and associated tax implications should also be factored into the equation.

Business Interests and Executive Compensation

When business interests or executive compensation such as RSUs, stock options, or carried interest are involved, property division becomes more technical. These assets require expert valuation and detailed analysis of vesting schedules, restrictions, tax consequences, and future earning potential.

Defining separate and community property values will impact division, and future events can dramatically affect value. Industries may also have unique valuation standards that differ from traditional approaches.

Business assets and compensation packages aren't easily divided or exchanged. They require a nuanced approach. Family lawyers are wise to bring in financial professionals early to ensure clients understand what they're receiving or surrendering.

Planning for Post-Divorce Finances

Beyond asset division, clients need guidance in planning their post-divorce lifestyle. Too often, clients focus on securing certain assets without considering how those assets affect long-term financial success. The residence may offer the appearance of stability but be unaffordable due to mortgage payments, taxes, and upkeep. A retirement account may balance the property division but be inaccessible for years without penalties.

Creating a realistic post-divorce budget during settlement negotiations can help prevent future financial shortfalls. Liquidity is especially critical for the lesser-earning spouse, and financial advisors can project how assets may perform over time. Estate plans should be updated post-divorce to ensure wills, trusts, and beneficiary designations align with the client's new circumstances.

Final Thoughts

Divorce marks both an end and a beginning. While the legal process provides structure and resolution, clients live with the financial ramifications of settlement for years to come. Family lawyers have a unique opportunity and responsibility to shape those outcomes with greater care.

Legal expertise is essential in divorce, but it is not the whole picture. When lawyers, financial advisors, and CPAs work together, clients receive more comprehensive guidance. Settlements tend to be stronger, more equitable, and better aligned with long-term needs and goals.

By pursuing informed asset division, applying a long-term perspective, and working with financial professionals, family lawyers can help clients achieve not just fairness on paper, but a more confident start to the next phase of their life.

HN

Mark Spalding is a Principal and Executive Wealth Manager at FPA Private Wealth Management and a former family lawyer. He can be reached at mark.spalding@finplaninfo.com.

In The News

KUDOS

Diego Peña, of The Peña Arbitration & Mediation Group, was inducted into the National Academy of Arbitrators at their 78th Annual Meeting in Seattle, Washington.

Hilda Galvan received the NACD Directorship Certification® from NACD (National Association of Corporate Directors).

Tayler Gray, of Carrington, Coleman, Sloman & Blumenthal, L.L.P., has been accepted into Dallas Regional Chamber's 2025 Leadership Development "LEAD YP" Program

Haleigh Jones, of Crawford, Wishnew & Lang, received Texas Women's Foundation's Young Leader award.

Talmage Boston, of Shackelford, McKinley & Norton, LLP, has been named 2025 Outstanding Alumnus for University of Texas Law School Alumni Association.

Mary Goodrich Nix, of Lynn Pinker Hurst & Schwegmann, has been selected as a Fellow of the Litigation Counsel of America.

Neil J. Orleans, of Neil J. Orleans and Associates, has been elected Vice-President of Finance and Treasurer of the Richardson Symphony Orchestra.

KoiEles Lomas, of McKesson Corporation, has been elected as a Fellow of the Texas Bar Foundation.

Ashton Butcher, of Akin Gump Strauss Hauer & Feld LLP, was presented with the Texas Young Lawyers Association President's Award of Merit.

Vicki Blanton, of AT&T, was re-appointed as Treasurer to the Board of Trustees for the Texas Center for Legal Ethics.

Jana S. Baker, of Ogletree Deakins, has been selected as a Fellow of the College of Labor and Employment Lawyers (CLEL) Class of 2025.

Kandace Walter, Associate Professor at SMU Dedman Law-Small Business & Trademark Clinic, and **Chelsea Hilliard**, of McGuireWoods LLP, along with the Dallas Women Lawyers Association (DWLA) and the J.L. Turner Legal Association, have received the 2025 State Bar of Texas Star of Achievement Award for their documentary *A Law Unto Themselves: How Women Lawyers of Dallas Transformed Law and Community—Together*.

Callie Caldwell Butcher, of Butcher Legal Group PLLC, has joined the Board of Directors of the National LGBTQ+ Bar Association.

Judge Audrey Moorehead, of the County Criminal Court No. 3, has been elected as Chair of the Criminal Justice Section of State Bar of Texas.

Cheryl Camin Murray, of Jackson Walker, has been appointed to the State Bar of Texas as a Director for District 6, Place 1, representing Dallas County until 2027.

Quentin Brogdon, of Crain Brogdon, LLP, has been awarded the State Bar of Texas 2025 Gene Cavin Award for Excellence in Continuing Legal Education.

Juanita DeLoach, PhD, of Barnes & Thornburg LLP, has been accepted into the Dallas Regional Chamber's 51st class of Leadership Dallas.

Bob Allen, of The Allen Law Group, has been elected as Secretary-Treasurer of the American College of Coverage Counsel.

ON THE MOVE

LaDawn Nandrasy joined Wick Phillips Gould & Martin, LLP as Partner.

Nick Buehner joined Vinson & Elkins LLP as Partner.

Michael Cumming and **David Monteiro** joined Sidley Austin LLP as Senior Managing Associate and Partner, respectively.

Stacie Cargill has joined Polsinelli PC as a Shareholder.

Dustin Sparks, **Jeffrey Libby**, and **Rebecca Donachie** joined Condon Tobin Sladek Thornton Nerenberg PLLC as named Member, Member and Associate, respectively.

Olesja Cormney is the Co-Founder of Respectful Employer LLP, a consulting firm specializing in workplace optimization solutions.

Jeff Bingham joined Sheppard, Mullin, Richter & Hampton as Partner.

Kate Pennartz and **Clayton Falls** joined Holland & Knight LLP as Partners.

Honorable Robbie Partida-Kipness joined Linebarger Goggan Blair & Sampson, LLP as Partner.

Shmyla Alam joined Grinke Stewart Law PLLC as a Senior Attorney.

Whitney Warren joined Nadler Law, PLLC as Partner.

Christopher Livingston joined Thompson, Coe, Cousins & Iron LLP as Partner.

Ryan Anderson and **Ben Weible** joined Iacuone McAllister Potter PLLC as Associate and Partner, respectively.

David Clem and **Megan Altobelli** joined Blank Rome as Partner and Associate, respectively.

E. Lawrence Vincent Jr. joined Sorrels Law as Partner.

Viking Tao joined Bradley Arant Boult Cummings LLP as a Partner.

Glast Phillips Murray Zopolsky has moved to 14901 Quorum Drive, Suite 300, Dallas, TX 75254.

News items regarding current members of the Dallas Bar Association are included in Headnotes as space permits. Please send your announcements to Judi Smalling at jsmalling@dallasbar.org

DBA Jurist of the Year: Catharina Haynes

CONTINUED FROM PAGE 1

Chair of the Appellate Judges Conference of the American Bar Association's Judicial Division.

She has also served on the Judicial Conference Committee on the Administration of the Bankruptcy System and just concluded her service on the Federal Judicial Center Appellate Judge Education Advisory Committee. While there she served as Chair of its Diversity Working Group which created and sponsored a national event titled "Roadways to the Bench: Who, Me? A Bankruptcy or Magistrate Judge?" in 19 cities (inviting all lawyers and law students) to foster and encourage a wide variety of people of various backgrounds and diversity to apply to be a bankruptcy judge. Federal judges of all types attended to visit with lawyers and law students about applying for a position as a bankruptcy judge. A few years later, the program was expanded to include Magistrate Judges in twice as many cities. She hopes it will continue occurring every few years.

She is a member of the Higginbotham Inn of Court where she currently serves as a "Master of the Bench." Decades ago, she served as an associate only a short time after the Inn had been formed in Dallas (and before it was named Higginbotham Inn of Court). She is also a member of the Ford Inn of Court.

Her service has been recognized and rewarded. She has received several awards during her career, including the 2024 Serjeant of the Inn Award from the Higginbotham Inn and 2018 Distinguished Alumni Award from Emory University School of Law; as well, she is a two-time recipient of the DBA's JoAnna Moreland Outstanding Committee Chair Award and a recipient of the Award of Excellence from the Dallas Association of Young Lawyers Foundation and the Outstanding Achievement Award from the Florida Tech Alumni Association.

While her career is marked by honors and service, her truest reward is living out the dream of her 10-year-old self—to be a champion for justice.

"I find it rewarding to help bring about justice for all here on the Fifth Circuit, and my previous time on the state court and as a lawyer," she said.

Congratulations to Judge Catharina Haynes—the Dallas Bar Association's 2025 Hon. Barbara M.G. Lynn Jurist of the Year! **HN**

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Focus | *Family Law*

Representing Clients with Diminished Mental Capacity

BY BRADLEY JOHNSON

In the courtroom and beyond, Texas attorneys are encountering growing numbers of clients with diminished mental capacity, including elderly individuals, clients with mental illness, or those affected by cognitive disabilities. This trend presents complex challenges that demand a careful balance of ethical obligations and legal responsibilities, as well as a working knowledge of the resources available to support these clients.

Legal Responsibilities Under Texas Law

Texas attorneys are bound by both state and national standards when representing clients whose ability to make reasoned decisions may be impaired. The Texas Disciplinary Rules of Professional Conduct ("TDRPC") Rule 1.02(g) states that a lawyer "shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client" even when the client's capacity is in question.

However, when a client is unable to act in their own interest, Rule 1.02(g) and Comment 9 of the same rule allow the lawyer to seek the appointment of a legal guardian or take protective action. These provisions align with ABA Model Rule 1.14, which is often cited as persuasive authority in Texas courts. Often a spouse would be the appropriate guardian, but obviously that won't work in a divorce case. Negotiating the minefield of a family in crisis during divorce gets exponentially more tricky when questions about one party's mental capacity are raised; that is the time to involve mental health professionals, and sometimes even Adult Protective Services.

Attorneys must also navigate the Texas Estates Code, particularly §§ 1002.017 and 1101.001–1101.153, which govern guardianship proceedings. If an attorney reasonably believes that a client cannot adequately act in their own interest, and no less restrictive alternative is feasible, initiating a guardianship may be necessary. However, such action should be taken cautiously, as it may infringe on the client's autonomy.

Ethical Duties: Advocacy, Confidentiality, and Autonomy

The ethical landscape is even more nuanced. Attorneys owe their clients zealous advocacy, yet diminished capacity raises the question: whose interest is the lawyer truly serving?

The State Bar of Texas emphasizes that diminished capacity does not strip a client of the right to make decisions. Rule 1.03 of the TDRPC requires that attorneys keep clients reasonably informed and explain matters to the extent necessary for them to make informed decisions—even when capacity is diminished.

Still, lawyers must remain vigilant against undue influence from third parties, such as family members or caregivers. Unauthorized disclosure of client information, even with good intentions, may violate Rule 1.05 on confidentiality unless the lawyer is acting to prevent harm or has obtained proper court authorization.

"Lawyers should assume competence unless there is clear evidence otherwise," said Karen Mayfield, a legal ethics expert and former chair of the Texas Bar's Committee on Aging and the Law. "The moment we presume incompetence without inquiry; we risk disempowering the very people we are supposed to protect."

Best Practices and Protective Measures

The ABA Commission on Law and Aging recommends that attorneys conduct a preliminary assessment of a client's decision-making ability through observation and respectful questioning. Texas lawyers are not expected to act as medical experts, but they are encouraged to document any signs of incapacity and consult qualified professionals when needed.

Attorneys may also consider alternatives to guardianship, such as:

- **Supported Decision-Making Agreements** under Tex. Estates Code § 1357.001, which allow clients to choose trusted advisors without surrendering legal rights.
- **Durable Powers of Attorney**, which enable clients to delegate decision-making authority in financial or medical matters.
- **Advanced Directives** and **Mental Health Declarations**, which empower clients to guide their future care while still competent.
- Resources for Attorneys and Clients

Multiple organizations in Texas provide tools and training for attorneys dealing with these situations:

- **Texas Lawyers' Assistance Program (TLAP)** offers confidential advice and referrals for attorneys facing challenging client relationships.
- **Texas Legal Services Center** and **Disability Rights Texas** provide information on rights and services for clients with disabilities or diminished capacity.
- The **State Bar of Texas** publishes the "Attorney's Guide to Working with Older Adults," which includes checklists, sample forms, and ethical guidance.

Conclusion

Representing clients with diminished mental capacity is not merely a procedural task—it is a profound ethical duty. Attorneys must remain informed, patient, and vigilant to protect both their clients' legal rights and their dignity. Texas law does not demand perfection but requires lawyers to act with compassion, integrity, and respect for client autonomy.

As the population ages and mental health issues become more openly discussed, attorneys will need to adapt and embrace their evolving role as both legal advocates and stewards of justice for all clients—regardless of capacity. **HN**

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