



BARTABS

PRESIDENT'S COLUMN by Heidi Elkins

EDITED BY
TOM COWART

UPCOMING EVENTS:

May 10: Joint Law Practice Management Section and Corporate Counsel Section (Noon, Texas Land & Cattle, Frisco)

May 10: LANWT Allen Clinic (6:00 pm, First United Methodist Church, Allen)

May 11: Estate Planning and Probate Section (Noon, Tino's, Collin Creek Mall, Plano)

May 11 & 12: 8th Grade Mock Trial Competition (Collin County Courthouse)

May 17: LANWT Plano Clinic (6:00 p.m., Salvation Army, Plano)

CCBA General Meeting
12:00 p.m.
Friday, May 18, 2012

Center for American and International Law

Representing the personal injury Plaintiff after *Haygood v. Escobedo*

Ric Armstrong

RSVP required by May 16 to guarantee a meal. Cost of meal: \$20 (cash or check only)
RSVP to
admin@collincountybar.com

May 24: Family Law Section (Noon, Center for American and International Law, Plano)

MID-YEAR REPORT

And now I must confess and tell you what you already know: I did not get the mid-year report out to you as promised. I assure you it was not for lack of desire or laziness, but rather a result of the very same thing that plagues the rest of you in this profession; I'm just too darn busy! But that not really being much of an excuse, I will condense and paraphrase here what I had intended to present to you in a mid-year report.

Administrative/Financial. One of the major objectives of the Board this bar year was essentially a continuation of the process we had begun several years ago, which was to bring more administrative and financial organization and accountability to our bar association. Anne Shuttee had reported last year that we were in the process of bringing our federal tax return filings up-to-date. I am happy to report that we have since filed all overdue tax returns with the IRS, as well as our current tax return. Additionally, we amended our status as a 501(c)(6) with the Texas Secretary of State. Unfortunately, the IRS does not have a process in place for recognizing that re-classification, so we have begun the rather tedious process of both updating our status with them, which will likely require a new application and issuance of a new Federal tax ID number, as well as applying for a Determination Letter from the IRS, which will confirm our status as a 501(c)(6) per IRS standards. While we are doubtful that this process will be completed prior to the end of this bar year, we are committed to completing the process as expeditiously as possible.

Additionally, we are pursuing confirmation of abatement of all late-filing penalties from all previous returns now that the IRS has evidence of our commitment to remain in compliance with federal tax rules and regulations as stated in our original request for abatement.

In addition, we have been creating checklists and procedures to assist in the annual transition from one Board of Directors to the next in order to ensure continuity of the observance of administrative matters. Along with the history project being conducted by our Historical Committee, our hope is that we will establish an institutional memory, which is no longer dependent upon the memory of a past president of the bar or other officer or member.

Budget. I realize that this may strike some of you as odd, for "Budget" to be separated out from the "Administrative/Financial" portion of this report; however, I've separated it in order to highlight the significance of this: WE HAVE A WORKING BUDGET! Thanks in very large part to the efforts of Melinda Eitzen and our Executive Director, Teresa Moore, we have an annual budget and a two-year forecasted budget. As the bar year has progressed, the budget has provided the framework and overview we needed to make financial decisions in relation to our annual income and expenses. Despite this being our first attempt to approve and stick to a budget, we are not only on track

(Continued on page 2)

8th GRADE MOCK TRIAL COMPETITION

May 11 & 12, 2012

Still time to volunteer to Judge a Mock Trial!

**To volunteer, send an email to:
Dale Rose - Mocktrial@collincountybar.com**

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CCBA MEMBERSHIP INFORMATION

OFFICERS	SECTIONS	
<p>President: Heidi Elkins 972-429-8221 heidi@elkinslegal.com</p> <p>Vice President: Byron Henry 214-672-2156 bhenry@cowlesthompson.com</p> <p>Secretary: Carie Mack 469-519-1020 cmack@macklawoffice.com</p> <p>Treasurer: Melinda Eitzen 972-403-1200 meitzen@duffee-eitzen.com</p> <p>Past-President: Anne Shuttee 214-237-2922 anne.shuttee@shutteelaw.com</p>	<p>ADR: Marvin Jones 972-578-0648 mjones.law@att.net</p> <p>Appellate: Alexis Steinberg 972-733-3223 steinberg@mossierlaw.com</p> <p>Civil Litigation: Mark Hill 214-672-2143 mhill@cowlesthompson.com</p> <p>Corporate Counsel: Martha James, Co-Chair 214-427-8400 mjames@holtjameslaw.com</p> <p>Anne Shuttee, Co-Chair 214-237-2922 anne.shuttee@shutteelaw.com</p> <p>Estate & Probate: Lori A. Leu 972-996-2540 lleu@leulawfirm.com</p> <p>Family Law: Melanie Morgan 972-384-1102 melanie@mckinneyfamilylaw.net</p> <p>Juvenile Law: Karen Arias 972-786-6163 kariaslaw@hotmail.com</p> <p>Law Practice Management: Beverly Burk 972-732-8185 Beverly@burkville.com</p>	<p><i>(President's Column, Continued from page 1)</i></p> <p>with our projections, but appear to be coming out ahead. Which brings me to the next topic, the annual Holiday Party.</p> <p>Holiday Party. After evaluating the Holiday Party and the associated expense to the bar, the Board determined that the past subsidy was unsustainable in light of our current income and expenses. However, given the positive feedback from our past surveys and the increased attendance at the Holiday Parties over the past several years, we did not simply want to abandon our signature event. Essentially, the 2011 Holiday Party was our "make it or break it" year for this party in terms of continuing the tradition of excellence if we were unable to significantly bring the subsidy down to a more manageable level. If you will recall, Anne reported that the 2010 bar subsidy for the party was over \$15,000. I'm thrilled to report that the bar subsidy for the 2011 party was less than \$5,000!!!</p> <p>That was the result of essentially two efforts. The first was the establishment and hard work of our Sponsorship Committee. The second was reduction of expenses, which understandably resulted in much more work for myself, other Board members, and Teresa Moore. Therefore, maintaining the success of the 2011 Holiday Party will require additional volunteers to help for a short period of time immediately prior to the party.</p> <p>Attorney Lounge. While the bar remains responsible for the Attorney Lounge at the Collin County Courthouse, we are pleased to announce that the satellite television service has been sponsored by Sharon Easley, thereby relieving the bar of the cost of that service. The remaining costs of maintaining the Attorney Lounge are continually being assessed and we remained committed to reducing costs wherever possible while maintaining a high-quality lounge for the attorneys practicing in the Collin County Courthouse.</p> <p>Dues and Membership. The increase in dues has certainly helped our bottom line this bar year, as has a slight increase in membership. We have approved two additional features to the structure of our membership and dues, which should increase membership and bar revenue as well. First, we will be offering memberships to law school students at a reduced rate, and second, we will have a prorated dues amount for NEW MEMBERS ONLY which will apply if they join the bar at or after the Holiday Party. Neither of these changes will affect section dues, as the sections set their own policies with regard to dues and the Board does not wish to overstep our authority regarding those policies.</p> <p>Sections. Speaking of sections, I am pleased to report that our two newest sections, Corporate Counsel and Law Practice Management, are established and fully active in large part due to the efforts of Anne Shuttee, Beverly Burk, and Marty James. Also, we anticipate a consolidation of the Civil Litigation and Appellate sections for the upcoming bar year, so please watch for notice of that change if you are or wish to become a member of those sections.</p> <p>Candidates' Forum and Judicial Polls. The bar has held Candidates' Forums and conducted Judicial Preference and Judicial Evaluation polls in the past and has continued that tradition this year. While we were in a "holding pattern" before conducting our Judicial Preference Poll due to a</p> <p><i>(Continued on page 3)</i></p>
<p>DIRECTORS</p> <p>Ric Armstrong 972-424-5297 ric@armstrongthelawfirm.com</p> <p>Lance Baxter 972-548-3830 lbaxter@co.collin.tx.us</p> <p>Sharon Easley 972-578-9597 sharon@easleyandmarquis.com</p> <p>Mark Hill 214-672-2143 mhill@cowlesthompson.com</p> <p>Jim Shepherd 972-234-3117 jim@jshepherdlaw.com</p>	<p>COMMITTEES</p> <p>CCYLA Liaison: Kristy Piazza 972-769-2727 kristy@koonsofuller.com</p> <p>Newsletter: Tom Cowart 214-692-9700 tom@tcowart.com</p> <p>Holiday Party: Heidi Elkins, Chair 972-429-8221 heidi@elkinslegal.com</p> <p>Historical Ric Armstrong 972-424-5297 ric@armstrongthelawfirm.com</p> <p>Sponsorship: Carie Mack (Co-Chair) 469-519-1020 cmack@macklawoffice.com Penny Phillips (Co-Chair) 972-665-9823 penny@phillips411.com</p> <p>Media Relations Christine Krupa Downs ckdowns@krupadownslaw.com</p> <p>Executive Director: Teresa Moore admin@collincountybar.com</p>	

proposed Ethics Advisory Opinion regarding campaign finance reporting obligations, those issues and the accompanying concerns were resolved with the help of Judge Copeland. Therefore, you should have received your Judicial Preference Poll, and we would appreciate your response. With regard to the Candidates' Forum, Jim Shepherd planned and prepared an excellent forum this year, which was attended by all of the candidates for the contested Collin County District and County courts. The feedback has been marvelous and we are incorporating Jim's plan into our bar records, so that future Boards will not have to "re-invent the wheel". We anticipate conducting a Judicial Evaluation Poll during the next bar year, as our desire is to conduct same in the non-election years and Judicial Preference Polls during election years.

CCYLA. The Board decided to try to forge a closer partnership with CCYLA this bar year and has been working toward that goal. One of the more significant decisions the Board of Directors made was to automatically place the outgoing President of CCYLA on the slate of nominations as a Director on our Board. Therefore, Chris Farish has been nominated in accordance with this policy and we are hopeful that the nominations will be voted on and approved at the bar's annual meeting and that this will help us establish closer ties with CCYLA, which are intended to be mutually beneficial.

CAIL. At the annual Board retreat last summer, we discussed the idea of finding a permanent "home" for the bar. We obviously do not have the membership num-

bers nor the financial ability to lease or purchase real estate at this time, so we began brainstorming our options. The Center for American and International Law was the answer we chose to pursue and as you all know, we have already moved our monthly meetings and Board meetings to the Center. The Center welcomed a relationship with the Collin County Bar Association and has been incredibly helpful and responsive to all of our needs thus far. Therefore, we anticipate expanding the scope of our relationship with the Center with the goal being to eventually be able to office out of the Center and hold our special events there, as well as for the Center to utilize our membership and legal connections to help support their educational mission.

Mock Trial. Dale Rose, with the assistance of Judge Lance Baxter, is continuing the tradition of excellence of our Mock Trial program this bar year. After last year's Mock Trial was completed, Dale Rose attended a Board meeting and reported on the success of the program and made full disclosure of all income and expenses. Because we have a net profit on this program, the Board voted to approve that those profits be "earmarked" for the program, and at this time, the plan is to use those funds to allow expense reimbursement (in limited amounts) for the teams to create trial materials and exhibits and to fund additional promotion of the Mock Trial program throughout Collin County.

Committees. Lastly, we came to the painful conclusion that the Board of Directors simply cannot "man" all the projects and programs of our growing association, and therefore, we have created several new committees, which will be delegated cer-

tain responsibilities and which will open up more opportunities for members to become involved in the bar without necessarily having to join the Board of Directors. Christine Krupa Downs now chairs the Media Relations Committee, Ric Armstrong chairs the Historical Committee, I think I'm still the de facto chair of the Holiday Party Committee but I've been recruiting so stay tuned, we have two individuals currently interested in chairing our Member Benefits Committee, and our Sponsorship Committee may have some openings for committee members and maybe even a new chair.

I hope you can all sense the excitement in the growth and progress of the bar at this time. And while I will be rotating out of the presidency soon, I intend to stay involved and work hard to keep improving our membership numbers, member involvement, and bar services. Finally, let me say that the Board of Directors has conducted themselves with the utmost professionalism and our meetings and even email meetings have been respectful to the point that I have enjoyed working with all of your officers and directors this year immensely and consider myself fortunate to have been a part of the success of the bar association this year.

If you have any questions about any of the information in this report or any other matter concerning the bar, please feel free to send me an email at heidi@elkinslegal.com and as always, I'll be happy to answer those questions or meet with you if you wish to discuss them further. Thank you for your time in reading this and your interest in your bar association. ❖

**State Bar's 2012 Annual Meeting
June 14-15 at Houston**

Online registration is now open for the State Bar's 2012 Annual Meeting. The Annual Meeting will be held June 14-15, at the Hilton Americas Houston and the George R. Brown Convention Center in Houston. Go to www.texasbar.com/annualmeeting for information and registration.

Our Own Kristy Sims Piazza Named President-elect of Texas Young Lawyers Association

By a vote of 2,026 to 1,438, Kristy Sims Piazza of Plano was elected president-elect of the Texas Young Lawyers Association (TYLA). Kristy is an associate of KoonsFuller, P.C. in Plano, where she practices family law. She has served on the TYLA board since 2008, and currently serves as TYLA vice president. Piazza served as TYLA secretary during 2010-11 and has served as an executive committee advisor, vice chair and co-chair of several TYLA committees. She was a 2009 recipient of TYLA's President's Award of Merit. Piazza is also involved with public service in her community and in 2011 she was honored as one of the Dallas Volunteer Attorney Program's most active pro bono attorneys. She has served on the board of directors of the Dallas Association of Young Lawyers, the Collin County Young Lawyers Association and the Collin County Bench Bar Foundation. She received a B.A. from the University of North Texas and her J.D. from Southern Methodist University Dedman School of Law.

Kristy will be sworn in as presidents-elect during the State Bar's Annual Meeting June 14-15 in Houston, and will serve as president of TYLA from June 2013 until June 2014.

CONGRATULATIONS, KRISTY!!

Also, Robert Guest of Forney was elected as SBOT Director for District 1, which includes Collin County.

OUR MONTHLY MEETING HAS MOVED!

OUR MONTHLY MEETING HAS MOVED!

NEW LOCATION

Center for American and International Law
5201 Democracy Drive
Plano, Texas 75024-3561

DIRECTIONS

From Dallas:

Go north on the Dallas North Tollway. Take the Spring Creek Parkway/Tennyson Parkway exit and drive north on the Dallas North Tollway frontage road. Go through the first stop light and turn right at the next stop light (Tennyson Parkway). Proceed east on Tennyson for 0.7 mile, and CALI is on the right, at the corner of Tennyson Parkway and Democracy Drive.

From McKinney:

Take 121 South, exit Preston Road, go South to Tennyson Parkway; turn west (right) to stop sign-Democracy; turn left, CALI building is on the right corner: 5201 Democracy Dr

Map: http://www.cailaw.org/CAIL_MAP.pdf

Next General Meeting at CAIL: May 18, 2012

CCBA SECTION INFORMATION

FAMILY LAW MATTERS Chair: Melanie Morgan

The next meeting of the Family Law Section will be Thursday, May 24th at noon. Our speaker will be John Westcott of the Office of the Attorney General. He will provide an overview of the Child Support Division, and give us tips on how to most effectively represent our clients in Child Support Review Court.

Our speaker for the June 28th meeting will be Andrew Passons of Denton, who will speak to us about the process of becoming board certified in Family Law.

We meet at the Center for American and International Law, 5201 Democracy Drive in Plano. We provide a catered lunch, so please look for and respond to the e-vite we send out the week before the meeting, so that we know how many lunches to order. If you don't receive the e-vite, please contact me at melanie@mckinneyfamilylaw.net.

ESTATE PLANNING AND PROBATE SECTION Chair: Lori A. Leu

The Estate Planning and Probate Section meets on the second Friday of each month at Nico's Cantina, which is situated on the southwest quadrant of Park & Preston in Plano (behind Zoes Kitchen), 1941 Preston Road, Suite 1040, 972-733-3122.

Our upcoming meetings are as follows :

Date: Friday, May 11, 2012 @ Noon
Topic: Trustee Quandaries: Selected Issues in Trust Design and Administration (0.75 CLE)
Speaker: Kal Grant

Date: Friday, June 8, 2012 @ Noon
Topic: POD, TR, ITF, JT TEN, JTWROS, and CPWROS: What You Don't Know Can be Hazardous to Your Client's Estate Plan" (0.75 CLE)
Speaker: Don Totusek

We will take the month of July off, so the following meeting will be:

Date: Friday, August 10, 2012 @ Noon
Topic: "Estate Planning in 2013 and the Foreseeable Future" (0.75 CLE)
Speaker: Philip M. Lindquist

Please refer to <http://ccba.willsandprobate.com> for new information as it becomes available. If you would like to be added to the email list in order to receive meeting reminders and other announcements, please email Dianne Reis at reislaw1@willsandprobate.com.

CORPORATE COUNSEL SECTION Temporary Co-Chairs: Anne Shuttee and Martha James

As previously announced, on May 10, the Corporate Counsel Section will hold a special panel discussion featuring representatives of local legal search firms (a/k/a "headhunters")! Cortland Grynwald of Pyle Legal Group and Amber Shockey of Momentum Legal will address topics such as how to find out about opportunities available through legal search firms; how to let a legal recruiter know that you'd be interested in hearing about opportunities; how to build a resume attractive to recruiters and their clients; what NOT to do in working with legal recruiters; how legal recruiters are compensated; and where the action is – location, type of skill set, in-house versus private firms, etc. – and what legal recruiters think the future holds.

This is a joint program with the Law Practice Management Section. It won't qualify for CLE but it could change your life! Whether you're looking to advance within your existing organization or might be interested in making a change – jumping into another organization, moving into corporate life from private practice, or exiting in-house practice to join a law firm – this program will be filled with important insights and information you'll want to know so that you can maximize your prospects for advancement.

We will meet at noon on May 10 in our regular meeting spot – the Texas Land & Cattle Company at Gaylord & Preston in Frisco. See you then!

Our next event will be a social, probably in late June or July – perhaps with a spot of CLE preceding the networking portion of the event. Stay tuned for details!

Anne Shuttee and Martha James, co-chairs of the Corporate Counsel Section, can be reached at anne.shuttee@shutteeelaw.com and mjames@holtjameslaw.com.

ADR SECTION Chair: Marvin Jones

The ADR Section meets on a quarterly basis. The next meeting will be noon, July 30, 2012 at Brio Tuscan Grill, Watters Creeks Shopping Center in Allen, TX. The speaker will be announced later. For information contact Marvin Jones at mjones.law@att.net or 972-578-0648, or Vic-Chair (and incoming Chair) Jim Young at jyoung@outsourcегc.com or 214-723-7860.

LAW PRACTICE MANAGEMENT SECTION Chair: Beverly Burk

At our April 23rd meeting, Mark Mitchell, Partner with FSB Fisher Broyles, LLP, www.fsblegal.com shared his insights on current trends and negotiating strategies for office leases drawn from more than 24 years representing landlords and tenants in real estate transactions. In May, we will join the Corporate Counsel Section's meeting to learn about the do's and don'ts of working with recruiters. **Note the different date and location below!**

Plan now to join the Corporate Counsel Section and other Collin County Bar Association members for a special joint meeting of the Law Practice Management Section (No section dues required)

When: **Thursday, May 10, 2012 from 12:00 pm. to 1:15 p.m.**

Where: **Texas Land & Cattle Steak House, 3191 Preston Rd., Frisco, Texas, 1 block north of Hwy 121 and Stonebriar Centre Mall at Gaylord Rd.**

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CCBA SECTION INFORMATION (CONT.)

<p><i>(Law Practice Management, Continued from page 5)</i></p> <p>Speaker: Representatives of local legal search firms (a/k/a "headhunters")</p> <p>Topic: The Do's and Don'ts of Working with Recruiters</p> <p>CLE: None</p> <p>COST: \$6-\$12 for selections from the Lunch Menu</p> <p>Thank you to those who attended our previous meetings. We encourage you to come again and exchange information with other attendees. Watch for e-mail invitations and check the calendar at www.collincountybar.org. Contact Executive Director Teresa Moore, admin@collincountybar.org, to be added to the e-mail list for this section.</p> <p>Upcoming Events:</p> <p>June 25, 2012: Regular 4th Monday meeting at Tino's Director and Officer Elections</p> <p>July 23, 2012: Regular 4th Monday meeting at Tino's Jason Ross, Partner, Curran Tomko Tarski LLP "Money Laundering: What Every Lawyer Should Know Before</p>	<p>Receiving Client Funds" MCLE 1.0 Ethics Credit</p> <p>August 27, 2012: Regular 4th Monday meeting at Tino's</p> <p>September 24, 2012: Regular 4th Monday meeting at Tino's</p> <p>October 22, 2012: Regular 4th Monday meeting at Tino's Alan Tolmas, CPAABV/CFF, ASA President and Founder of Texas Financial Forensics "What's Your Law Practice Worth?"</p> <p>November 26, 2012: Regular 4th Monday meeting at Tino's</p> <p>December 24, 2012: No meeting, celebrate the season!</p> <p>January TBD, 2013: Making Your Practice Work Seminar!</p> <p>Beverly Burk, chairman of the Law Practice Management Section can be reached at beverly@burkville.com❖</p>	<p>APPELLATE SECTION Chair: Alexis Steinberg</p> <p>For information, please contact Alexis Steinberg at 972-733-3223 or steinberg@mossierlaw.com for information. ❖</p> <hr/> <p>CIVIL LITIGATION SECTION Chair: Mark Hill</p> <p>See Appellate Section for joint meeting details. Please contact Mark Hill at 214-672-2143 or mhill@cowlesthompson.com for information❖</p> <hr/> <p>JUVENILE LAW SECTION Chair: Karen Arias</p> <p>Please contact Karen Arias, 972-786-6163 kariaslaw@hotmail.com for more information. ❖</p>
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FACEBOOK GROUP!

The CCBA is now on Facebook!

Come join our Facebook group and connect with your friends and associates online

Search for "Collin County Bar Association" and you should find us

SERVING THE COMMUNITY by Jan Kearney

No much to report this month! It's all pretty much the same here. We are still working to see as many needy applicant's as possible and work through who we can assist. Resources are very tight and the applicant's are never ending. We here at LANWT appreciate all the time our volunteers give us at clinics and through pro bono case work. Take a moment to review the clinic dates listed below and let me know if you are available to assist at one of these. It's interesting and you are giving back in a way that only you can.

Reporting your qualifying pro bono and financial contributions, helps highlight the importance of pro bono in meeting the legal needs of low income persons while also providing support for funding requests for legal services programs and improving the public view of lawyers.

Here are the 2012 clinic dates. We are looking forward to a great 2012!

ALLEN

May	10
June	14
July	12
Aug	9
Sept	13
Oct	11
Nov	08
Dec	13

PLANO

May	17
June	21
July	19
Aug	16
Sept	20
Oct	18
Nov	15
Dec	20

At the April clinic in Allen there were 28 applicants. Volunteer attorneys who assisted were Giang Doan, Robert Lamb, Latrice Andrews, Steve Pitzner, Sakina Hussain, Nicole Compary, John Vestal, Bradley Voyles, Jac Schuster and Jacqueline Williams. Volunteer Paralegals and other who assisted were Ciara Lambrecht, Cecilia Herrera, Hannah Stone, Mary Ellen Lemm,

Jason Miller, Chris McAlister, Linzi Baruah, Monica Vincent, Misty Wise, Michelle Krock, Melissa Martin, Amanda Thompson, Henry Delgado, Christy Hislop, Serena Benson, Karla Arce, Cathy Hallas, Ann Akins, Adrienne Lamb and Yolanda Hauxwell.

At the April clinic in Plano there were 31 applicants. Volunteer attorneys who assisted were John Unell, Robert Lamb, Nancy Lorenzen, Mary Waller, Giang Doan, Dana Stewart, Sakina Hussain, Adriane Grace and Sam Kaminski. Volunteer Paralegals and others who assisted were Mary Ellen Lemm, Rebecca Parr, Tyler Nowaski, Laura Lewis, Linda May, Laura Hauser, Henry Delgado and Josh Grace.

We always have pro bono cases needing placement with a private attorney. Please give me a call: I have a variety of case types from which to choose. All accepted clients have been prescreened for income eligibility and have been given an Affidavit of Inability to Pay Costs so that filing and service fees are waived. Don't forget to check the TexasLawyersCare website "Take a Case" program. You might find something you like!

LANWT does not report our volunteers' pro bono hours to the Texas State Bar, but we do keep track of your reported hours in our files. If you would like to report your hours, please feel free to call me for your annual total. You may then report your hours directly to the State Bar online through www.texasbar.com/reporting. While reporting hours is voluntary, it is extremely useful and serves several important goals, including that of the Texas State Bar, which uses the information in its reports to show that its members are helping to meet an important need and to demonstrate why funding for legal services is critical.

Please contact me with any ideas or suggestions you might have about a specific legal need we should try to reach out to or with hints for our clinics. Feel free to email me at kearneyj@lanwt.org or call me at (972) 542-9405, extension 2008 . ❖

DAVID SLAYTON NAMED HEAD OF TEXAS OFFICE OF COURT ADMINISTRATION

Lubbock County's court administration director has been named administrative director of the Texas Office of Court Administration, Chief Justice Wallace B. Jefferson announced in April.



David Slayton, who has headed court administration for both district courts and county courts at law in Lubbock County since May 2004, follows Carl Reynolds as OCA director. Reynolds retired March 31. Before he became Lubbock County's director of court administration, Slayton, from Bellevue, Texas, was court services supervisor for the U.S. District Court in Dallas. He previously served as intake and docketing clerk for the U.S. District Court in Lubbock and as state district court coordinator and deputy district clerk in Lubbock County. He holds a bachelor's degree in political science from Texas Tech University and a master's in public administration from Troy State University. He was named a Fellow of the Institute for Court Management by the National Center for State Courts in Williamsburg, Va., in 2007 and is a board member of the National Association for Court Management. He will become president of the national association in July 2013.

OCA, which provides technical and administrative services to Texas courts, employs or supervises more than 200 employees across the state. Its current annual budget is \$45 million.

DIAGNOSES IN EXPERT TESTIMONY: USES AND CAUTIONS

by John A. Zervopoulos, Ph.D., J.D., ABPP

Mental health experts often use diagnoses to support their opinions. Plaintiff suffers from Posttraumatic Stress Disorder; Father has a bipolar disorder; Mother is depressed. These terms, defined in the Diagnostic and Statistical Manual of Mental Disorders (currently, DSM-IV-TR), present lawyers with a challenge: the terms appear to capture, in professional language, the essence of a problem, yet they shed little useful light on how the problem affects the litigant in his or her daily life. In addition, mental health experts may use diagnoses to hide the inferences that link experts' data (developed and gathered during evaluations, therapy, or by other methods) to their conclusions and opinions—a legal reliability concern. See *Gammill v. Jack Williams Chevrolet*, 972 S.W.2d 713, 726 (Tex. 1998).

The legislature and courts have not made DSM-IV-TR diagnoses elements of most legal definitions or standards. Except for insanity or civil commitment cases, which require a diagnosis of a severe mental disease or defect as an element of a claim or defense, courts must base their decisions on litigants' functional abilities, impairments, or capacities without reference to diagnoses. For example, a family court will look primarily to whether a parent can care for his or her children and address the children's best interests, not to whether a parent has been diagnosed with a depression—many depressed people function adequately as parents. Or a criminal court will look primarily to whether a defendant is competent to stand trial, not to whether he or she has been diagnosed with a schizophrenia disorder. Thus, the expert's inability to explain how the litigant's diagnosis specifically reflects the litigant's behaviors as related to the legal question before the court

should raise red flag warnings about the reliability of the expert's testimony.

Lawyers and mental health experts are more likely to grasp the authority of DSM-IV-TR diagnoses in court than they are to understand or acknowledge the problems of relying primarily on those diagnoses. The authority is obvious: DSM-IV-TR is a diagnostic system that has developed over a period of more than 55 years under the auspices of the American Psychiatric Association.

Further, lawyers may use DSM-IV-TR diagnoses differently, depending on the case. For instance, family lawyers will more likely employ such diagnoses offensively, emphasizing, for example, that a parent with a bipolar disorder cannot adequately attend to his or her child's daily needs. In contrast, criminal defense lawyers may use a diagnosis of schizophrenia defensively to explain how the defendant's judgment was impaired during the commission of a crime.

Despite its draw to lawyers and experts, DSM-IV-TR was not developed to be used in court. Rather, DSM-IV-TR primarily focuses on three non-legal purposes: to provide a basis for communication among clinicians, researchers, and educators about diagnostic issues related to mental disorders; to plan mental health treatment of patients and anticipate treatment outcomes; and to reimburse mental health treatment costs in the health care and insurance industries. In light of these uses, DSM-IV-TR is an evolving diagnostic system in which diagnostic categories are refined, added, or dropped with each succeeding edition. In addition, researchers and clinicians actively debate

the reliability and validity of various diagnoses as well as DSM's structure itself.

In addition, DSM-IV-TR specifically cautions about its use in legal settings, noting that "there are significant risks that diagnostic information will be misused or misunderstood. These dangers arise because of the imperfect fit between the questions of ultimate concern to the law and the information contained in a clinical diagnosis." In addition, DSM-IV-TR indicates that "it is precisely because impairments, abilities, and disabilities vary widely within each diagnostic category that assignment of a particular diagnosis does not imply a specific level of impairment or disability." In other words, people sharing the same diagnosis may differ in their abilities to manage life tasks. This caution highlights the law's emphasis that litigants are judged on their capacities, not on diagnoses. DSM-IV-TR xxxiii (2000).

In sum, DSM-IV-TR's purposes and its cautions about its use in court make it incumbent on mental health experts who invoke DSM-IV-TR diagnoses of litigants to describe how those diagnoses relate to their opinions and to the legal questions before the court.

John A. Zervopoulos, Ph.D., J.D., ABPP is a forensic psychologist and lawyer who directs PsychologyLaw Partners, a forensic consulting service to lawyers on psychology-related issues, materials, and testimony. He is online at www.psychologylawpartners.com and can be contacted at 972-458-8007 or at jzerv@psychologylawpartners.com. ❖

Lisa M. Tatum Named President-elect of State Bar of Texas

AUSTIN - State Bar of Texas officials tonight announced that **Lisa M. Tatum** of San Antonio was elected by the state's lawyers to serve as president-elect of the organization. Ms. **Tatum** is the founder and owner of LM Tatum, PLLC (The Tatum Law Practice) in San Antonio with a practice that focuses on corporate, education, employment and public finance law. Tatum serves as outside and general counsel to corporate clients, public and private, as well as individuals. Prior to forming her own firm, Tatum was managing associate at West & Associates L.L.P., an associate with Escamilla & Poneck, Inc., and served as a Bexar County Assistant Criminal District Attorney in San Antonio.

Tatum will be sworn in as presidents-elect during the State Bar's Annual Meeting June 14-15 in Houston, and will serve as president of the State Bar June 2013 until June 2014.

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ANNOUNCEMENTS

IN THE NEWS

Amy B. Ganci of Ganci LLP will speak to the 27th Annual National Conference on Equine Law sponsored by the University of Kentucky School of Law in Lexington, Kentucky

Amy B. Ganci has been admitted to the American College of Equine Attorneys

Aimee Pingnot, Lindley Bain, and Jim Mueller have been selected for the 2012 Texas Rising Stars List

ON THE MOVE


Jeff Domen has joined Goranson Bain

Dorothea L. Vidal and **Jeffrey W. Harrison** have joined Geary, Porter & Donovan as Shareholders

Lisa Marquis has joined Hanshaw Kennedy Marquis, PLLC as a Shareholder

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The Alphabet Soup of Treasury: What in the World are BSA / AML Exams and who are the Examiners?

By: Mike Villa

If an Internal Revenue Service (“IRS”) Agent knocks on your client’s door, you might assume the IRS is conducting an audit of your client’s tax returns. While this may be true of many IRS visits, it is not always the case.

The IRS has several different types of specialized agents, some of whom are not conducting Title 26 tax audits. Specifically, Bank Secrecy Act (“BSA”) Examiners, are Revenue Agents who conduct Title 31 exams to determine if certain types of taxpayers are in compliance with the BSA and Anti-Money Laundering (“AML”) laws.

BSA Examiners

For purposes of IRC § 6103, the BSA Examiner is an IRS Agent essentially working for Treasury, but not as an IRS employee, thus he or she cannot access tax returns or tax return information. In addition to the Internal Revenue Manual (“IRM”), BSA Examiners have procedures for examining money service businesses that can be found in the BSA / AML Examination Manual, which is located on the Financial Crimes Enforcement Network (“FinCEN”) website.

In 2011, there were approximately 385 Title 31 Revenue Agents. BSA Examiners are responsible for, among other things: (1) examining non-bank financial institutions for BSA compliance, and (2) examining dealers of precious metals and stones, certain casinos, insurance companies, certain credit unions, and money service businesses. To the extent that the Examiner believes there are noncompliance issues, civil and criminal penalties may be applicable for noncompliance. Exams are conducted by experienced AML Agents identified as “SB/SE Fraud specialists.”

FinCEN previously issued final rules requiring “dealers” in precious metals, jewels and stones to institute AML programs. The deadline to comply was January 1,

2006. During 2011, in order to ensure compliance, the IRS increased its efforts for Title 31 examinations of “dealers” engaged in the sale of “covered goods” (i.e. jewels, precious metals, precious stones (including finished goods).

Generally, a business will be deemed a “dealer” that is required to implement an AML program if: (a) the business buys more than \$50,000 in covered goods; and (b) received more than \$50,000 in gross proceeds from the sale of covered goods.

General Scope and Depth of BSA Exam

BSA exams focus on determining compliance with federal AML statutes and identifying areas of noncompliance with the BSA in business operations. Practitioners should note that the BSA and related regulations at 31 CFR Part 103 are an entirely different group of laws from Title 26. Some procedures used in a BSA examination are substantially different from those used in an income tax examination.

A recently received Information Document Request (“IDR”) for a Title 31 examination reveals the type of information and records that Examiners are reviewing for compliance:

1. AML Program and Policy.
2. Any written policy statements or procedures as they relate to the BSA.
3. Training materials, training schedules and employee AML tests. Documents showing employees completed BSA training.
4. Installment sales agreements.
5. Customer records.
6. Bank statements.
7. Copies of Form 8300 which have been prepared.
8. Copies of Form 109 (SAR), FBARs, Form 105 (CMIR).
9. Company policies regarding payment arrangements.
10. Purchase records.
11. Identify suppliers and their background information.

12. If supplier is from another country, provide documentation verifying they are following AML procedures and regulations.

13. A list of nearby competitors who are dealers in precious metals, stones or jewels.

The BSA Exam should be sufficient to assure that the entity being examined is (a) subject to the BSA; (b) has a written AML compliance program that meets statutory and regulatory requirements; (c) is implementing a written AML compliance program that meets the statutory and regulatory requirements and that would identify structured transactions, trends and patterns of structuring, and other suspicious activities; and (d) is in compliance with all other applicable BSA recordkeeping and reporting requirements.

Distinctions Between the BSA Exam and a Title 26 Audit

If Examiners find violations, they may make civil penalty referrals to FinCEN and/or criminal referrals to IRS-Criminal Investigation (“CI”). However, if the examiner finds a minor violation, such as unfiled BSA forms, then the examiner may simply issue a BSA warning letter, also referred to as a Letter 1112, Notification of Apparent Violation.

Practitioners should note that factors for civil penalty referrals are potentially broad. In addition, although the examiner is focused on issues related to BSA/AML compliance, the examiner can refer the case for a Title 26 audit also.

There are several additional notable distinctions between a BSA exam and Title 26 audit. For example, the Examiner will request the practitioner to provide a general power of attorney valid under state law, not a Form 2848. IRS Form 2848 is not appropriate for BSA examinations. Second, the Examiner may use the Title 31 summons instead of the income tax summons, Form 2039. Third, the Exam-

Don’t forget to submit your article for this space for future BarTabs!

SEND AN ARTICLE OR HAVE QUESTIONS? — EMAIL TOM COWART AT TOM@TCOWART.COM

(Villa article, Continued from page 11)

iner will likely seek interviews of person (s) responsible for compliance with the BSA, including compliance personnel, and business operations and management personnel.

Issues for the Practitioner to Consider

The documents requested under the IDR or reviewed during the exam may show the Taxpayer failed to comply with the BSA/AML requirements.

Will the Examiner merely issue a Letter 1112 to correct mistakes? When is it appropriate for the Examiner to issue a Letter 1112? According to the IRM, Letter 1112 may be appropriate for violations that are technical, minor, infrequent, isolated or not substantive and do not meet the criteria for referral to FinCEN under the Referral Guidelines. An example of Letter 1112 can be located in the Internal Revenue Manual at Exhibit 4.26.8-2.

However, what if the violations are potentially more than minor? One must consider the potential consequences of a civil referral to FinCEN for penalties, or criminal referral to CI. In determining whether the violations might be more than “minor”, it may be prudent to analyze whether the deficiencies will rise to the level of “willful” violations. In addition, when reviewing the likelihood of referral, remember that factors for civil penalty referrals are potentially broad.

Assuming there are significant or “willful” violations, a potentially critical issue to consider is the Examiner’s request to interview the client. Of course, if the client refuses an interview, the examiner can obtain a summons. So the central issue may then become whether your client needs to consider, or at the very least understand, his right to invoke the privilege against self-incrimination.

If the client agrees to an interview, will he or she be making admissions that they failed to comply with AML regulations?

Will this lead to other admissions regarding unreported income? Again, although this is not a Title 26 audit, the examiner will inevitably want to raise issues related to bookkeeping, which could begin to impact tax reporting issues. Admissions made by the client may potentially be subsequently admissible against him for purposes of civil penalties or criminal prosecution.

If you have any questions or would like additional information regarding IRS or BSA/AML exams, please contact Mike Villa at mvilla@meadowscollier.com.

WANTED: ARTICLES FOR BARTABS

I’ve exhausted my inventory of articles!

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INFORMATION OR QUESTIONS?

EMAIL TOM COWART AT TOM@TCOWART.COM

CALENDAR AT A GLANCE

May 10:	Joint Law Practice Management Section and Corporate Counsel Section (Noon, Texas Land & Cattle, Frisco)
May 10:	LANWT Allen Clinic (6:00 p.m.-First United Methodist Church, 601 S. Greenville, Allen)
May 11:	Estate Planning and Probate Section (Noon, Tino's, Collin Creek Mall, Plano)
May 11 & 12:	8th Grade Mock Trial Competition (Collin County Courthouse)
May 17:	LANWT Clinic – Plano (6:00 P.M. - Harrington Public Library, 1501 18th Street, Plano)
May 18:	CCBA General Meeting (Noon, Center for American and International Law, Plano) NEW LOCATION
May 24:	Family Law Section (Noon, Center for American and International Law, Plano)
June 8:	Estate Planning and Probate Section (Noon, Tino's, Collin Creek Mall, Plano)
June 14:	LANWT Allen Clinic (6:00 p.m.-First United Methodist Church, 601 S. Greenville, Allen)
June 21:	LANWT Clinic – Plano (6:00 P.M. - Harrington Public Library, 1501 18th Street, Plano)
June 25:	Law Practice Management Section (Noon, Tino's, Collin Creek Mall, Plano)
June 28:	Family Law Section (Noon, Center for American and International Law, Plano)
July 23:	Law Practice Management Section (Noon, Tino's, Collin Creek Mall, Plano)
July 30:	ADR Section (Noon, Brio Tuscan Grill, Watters Creeks Shopping Center, Allen)
Aug 10:	Estate Planning and Probate Section (Noon, Tino's, Collin Creek Mall, Plano)
Aug 27:	Law Practice Management Section (Noon, Tino's, Collin Creek Mall, Plano)
Sept 24:	Law Practice Management Section (Noon, Tino's, Collin Creek Mall, Plano)
Oct 22:	Law Practice Management Section (Noon, Tino's, Collin Creek Mall, Plano)
Nov 26:	Law Practice Management Section (Noon, Tino's, Collin Creek Mall, Plano)

(For calendar updates, contact Teresa Moore, Executive Director: admin@collincountybar.com)

THE LIBRARY CORNER

New on the shelf: *Limited Scope Legal Services: Unbundling and the Self-Help Client.*

Limited scope representation (also known as “unbundling,” “a la carte,” or “alternative fee arrangements”) is being touted as the way of the future. This book by Stephanie Kimbro maps out everything you need to know about unbundling including why you should do it (because it makes another revenue stream available to you) and how you should start (with an area you know). Kimbro covers important topics such as ethics (define the scope carefully), best practices (keep records, explain procedures, and check your malpractice insurance), different methods of unbundling (ghostwriting, limited appearances, legal coaching, and online services) and opportunities for marketing unbundled services. The author has included extensive appendices, some of the titles of which are “Case Studies of Firms That Unbundle,” “Checklist for the Unbundling Practitioner,” “Additional Questions for the Unbundled Client Intake Process,” and “Sample Limited Scope Engagement Agreements.” Be the first to check out this excellent resource— contact the Law Library at 972-548-4255 for more information or see a Librarian to arrange attorney checkout. ❖