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July Luncheon Meeting

Wednesday, July 8, 2009, 12:00 p.m.

Town Club

800 North Shoreline, 6th Floor, Center Elevators

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Speakers: Nancy DeLong and Paul Swacina

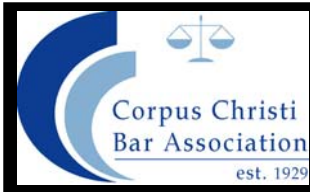
**Title: "The Ethical Duty to Engage in Pro Bono and
the Opportunity to Do It Locally"**

CLE Credit: .75 hour Participatory, ETHICS

Cost: \$23.00 per person for members, \$28.00 per person for non-members if reserved by noon, Tuesday, July 7, 2009. Call the Bar Office at 883-4022 to RSVP or e-mail us at sguajardo@corpusbar.com. All reservations must be paid for. The cost at the door will be \$25.00 for members, \$30.00 for non-members.

L NOTE 7

ADDED ADVANTAGE OF ADVANCE RESERVATIONS — THOSE WHO RSVP IN ADVANCE WILL ONLY HAVE TO SIGN THE SHEET (AND, OF COURSE, STAY FOR THE PRESENTATION) IN ORDER TO OBTAIN THEIR CLE CREDIT



Newsletter

July 2009

Space-Sharing Issues

While sharing office space with another lawyer or lawyers can be means of transiting these tough economic times and staying "in the black," all need to be aware that certain ethics issues are presented by office-sharing arrangements.

Among the issues presented are the following:

- (a) Is professional independence maintained?
- (b) Can the public be misled into thinking you share a professional affiliation with other lawyers in the spaces?
- (c) Is there truly "a close and continuing relationship" with a lawyer listed as "of counsel" to a practice or is that lawyer merely sharing space and "only available for occasional consultations?"
- (d) Are the offices structured and managed in a way that does not allow for confidences to be shared to avoid conflict of interest issues if the lawyers sharing the space should happen to represent adverse parties? Aspects of this issue include
 - (1) is there an employee who might be privy to the confidences and secrets of both lawyers? and

- (2) are there separate secure systems for files, computers, telephones, and fax transmissions so that other lawyers and their employees are unable to access confidential client information?

Sharing office arrangements with non-lawyers is a separate issue that subjects lawyers to distinct ethics requirements.

(Notes from an article on the ABA Website by Kathryn A. Thompson addressing the ethical issues presented by lawyers sharing office space)

Certification of Your SBOT Profile REQUIRED ANNUALLY

State Bar of Texas members are required to "certify" their lawyer "profiles" once a year. Texas Government Code Section 81.115 requires licensed lawyers to provide certain information to the State Bar of Texas, the lawyer's "profile," annually, including primary practice area, specialty certification information, and disciplinary actions in Texas or another state. Your "profile" is separate from your contact information maintained on the State Bar of Texas website, texasbar.com.

You can check and "certify" your "profile" on line:

To do so, go to texasbar.com and log in to "My Bar Page."

Then click on "Update My Profile."

Next, under "My Attorney Profile," click on "Edit."

Review the information set forth there for accuracy, and make any changes necessary to bring it up to date.

When you are sure your "profile" is correct, click on "Yes" to "certify" that it is correct.

If you do not have access to the internet, you can certify your profile by calling Jeff Martinez in the State Bar of Texas Membership Department, (800)204-2222, extension 1816. Jeff will fax or mail you a form which should be completed and returned.

If you should happen to reach Jeff's voicemail, you should leave a message stating that you need an "Attorney Profile Form" and leave your name, bar number, and fax number or mailing address (if the

address has changed recently). Jeff will mail you a form which should be completed and returned.

Requirement to Notify the State Bar of Texas of Changes in Contact Information within 30 days of Change

In October 2008 the Supreme Court of Texas amended the State Bar Rules to require that members of the State Bar of Texas to notify the State Bar of Texas of any change in their registered contact information within thirty (30) days of the change. Article III, Section 2A of the State Bar Rules mandates that the following information on file with the State Bar of Texas remain current:

- 1) preferred physical mailing address or post office box,
- 2) telephone number.
- 3) facsimile transmission number, and
- 4) e-mail address.

The preferred physical mailing address or post office box constitutes the member's registered address and will be used when mailing official notices, including membership compliance information, member benefits, and disciplinary matters, to the member.

This requirement is separate from and in addition to the requirement to "certify" your "profile" annually noted in the previous article.

As with "certification" of your "profile," you can comply with this requirement on line:

To do so, go to texasbar.com and log in to "My Bar Page."

Then click on "Edit" next to "My Contact Information."

Review the information set forth there for accuracy, and make any changes necessary to bring it up to date.

Merely exit the "Edit" window, and you will have updated your contact information.

If you do not have access to the internet, you can comply with the Contact Information update requirement by calling the State Bar of Texas at (800)204-2222, extension 1383.

CCBA Dues Are Due July 1st

Have you paid your 2009 — 2010 dues yet? The new year starts July 1st. Please check your records. If you have not yet paid them, you are asked to do so as soon as possible. Your payment of your dues without our having to mail another reminder will save CCBA's resources. If you have any questions, please call Dick King at 883-4022 or e-mail him at dking@corpusbar.com.

We Listen

What can we do for you? Do you have a suggestion as to how your Corpus Christi Bar Association can improve its service to you? We want to meet your needs to the extent possible.

Please send your suggestions via e-mail to dking@corpusbar.com or write us at the CCBA office: 555 North Carancahua Street, Suite 260, 78478-0033.

No Charge for Membership in CCBA's Sections

The Corpus Christi Bar Association has three sections: the Corpus Christi Young Lawyers Association, the Criminal Defense Section, and the Family Law Section. The Corpus Christi Young Lawyers Association is open to all members of the CCBA who were 36 or younger as of June 1st or had been practicing law for less than five years as of June 1st. The Criminal Defense Section is open to all members of the CCBA as is the Family Law Section. All three sections have their own officers, CLE Luncheons, and social functions; and there is no additional charge for membership in any or all of the sections. If you wish to join one or all of the sections, just let us know by calling 883-4022 or e-mailing sguajardo@corpusbar.com.

Important Dates

JULY 2009

- 1 — New CCBA Board Takes Office
- 1 — New CCYLA Board Takes Office
- 1 — Criminal Defense Luncheon
- 3 — Holiday, Bar Office Closed
- 4 — **Naturalization Ceremony & Voter Registration**
USS Lexington
- 8 — CCBA Luncheon, Town Club
- 9 — CCYLA Board Meeting
- 17 & 18 — SBOT Bar Leaders Conference
- 21 — Family Law Section Luncheon, Tower II, Community Room
- 25 — CCBA Board Retreat

AUGUST 2009

- 5 — Criminal Defense Luncheon
- 6 — CCYLA Board Meeting
- 12 — CCBA Luncheon, Town Club
- 18 — Family Law Section Luncheon, 12:00 p.m., Portis Country Kitchen II
- 18 — CCBA Board Meeting

SEPTEMBER 2009

- 2 — Criminal Defense Luncheon
- 3 — CCYLA Board Meeting
- 7 — Labor Day Holiday, Bar Office Closed
- 9 — CCBA Luncheon, Town Club
- 15 — Family Law Section Luncheon
- 15 — CCBA Board Meeting

OCTOBER 2009

- Coat and Warm Blanket Drive Begins
- 1 — CCYLA Board Meeting
- 2 — **Family Law Seminar, Ortiz Center**
- 7 — Criminal Defense Luncheon
- 14 — CCBA Luncheon, Town Club
- 20 — Family Law Section Luncheon
- 20 — CCBA Board Meeting

NOVEMBER 2009

- Coat and Warm Blanket Project Ends; Adopt a Family Project Begins
- 4 — Criminal Defense Luncheon
- 5 — CCYLA Board Meeting
- 6 — **Advanced Personal Injury Law**

Seminar, Ortiz Center

- 11 — Federal and County Holiday
Bar Office Closed
- 17 — Family Law Section Luncheon
- 17 — CCBA Board Meeting
- 18 — CCBA Luncheon, Town Club
- 26 — Thanksgiving, Holiday, Bar Office Closed
- 27 — Bar Office Closed

DECEMBER 2009

- Adopt a Family Project Deliveries to Adopted Families
- 3 — CCYLA Board Meeting
- 24 — Bar Office Closed
- 25 — Christmas Holiday, Bar Office Closed

2010

- Criminal Defense Section Luncheon 1st Wednesday
- Young Lawyers Board Meeting 1st Thursday
- Corpus Christi Bar Association Luncheon 2nd Wednesday
- Family Law Section Luncheon 3rd Tuesday

Corpus Christi Bar Association Board Meeting, 3rd Tuesday

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the Board of Directors**

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Docket Call June 18th



The Honorable Joe Cohn and Patrick Beam.
Judge Cohn's 80th birthday was recognized by a
serenade of Happy Birthday by all in attendance



David Stith, Adam Rodrigue, Les Cassidy, and
the Honorable Brian Owsley



The Honorable Marisela Saldana and Libby
Edwards



The Honorable J. Bonner Dorsey, Francis Gandy, and
Michael Elliott



Mark Woerner and Alissa Adkins



Tyner Little and David Bright



Jordan & Austin Anderson



The Honorable Lisa Gonzales and Eric Stewart

Judge Mike Westergren's Case Summaries

IN THE INTEREST OF B.N.B., A CHILD, Dallas Court of Appeals, 246 S.W.3d 403, 2008. No subsequent appellate history.

Stepmother could not be enjoined from being around the children just because she refused to take a lie detector test or attend the second day of the trial hearing.

LINDA LITTLE AND WALTER LITTLE v. STATE, Amarillo Court of Appeals, 246 S.W.3d 391, 2008. No subsequent appellate history.

Conviction of enticing away from lawful custody was upheld. The fact that child may have left home voluntarily was no defense where the record showed that defendants enticed child to leave home in a number of ways, including criticizing her mother's lifestyle from a moral and religious perspective, playing on the

child's religious convictions by telling her that they were her God-given family, giving the child gifts and supplying the means and opportunity to leave her home.

DEARL HARDY v. STATE, Houston 14th Court of Appeals, 246 S.W.3d 290, 2008. No subsequent negative appellate history.

Deputy Sheriff's conviction for perjury was upheld where he required a subordinate to file an affidavit for DWI even though that deputy did not think that the defendant was intoxicated. The fact that the defendant deputy thought that the defendant was intoxicated was irrelevant.

STATE v. JUAN MANUEL RAMIREZ, Amarillo Court of Appeals, 246 S.W.3d 287, 2008. No subsequent appellate history.

Motion to suppress evidence was upheld by the appellate court where two persons were simply sitting in a car during the



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lunch hour and made a movement towards the center console as the officer approached. This conduct did not give officer authority to detain defendant and search for weapons. There was no evidence of nervousness or furtive acts.

STATE V. MID-SOUTH PAVERS, INC., Austin Court of Appeals, 246 S.W.3d 711, 2007. No subsequent appellate history.

This may be a significant administrative law case. Executive director of state agency is not permitted to disregard the finding of an Administrative Law Judge with which he disagrees without a written statement of the reasons and legal basis for any change to the Administrative Law Judge's proposal.

AUDREY R. LINTON v. STATE, 13th Court of Appeals, 246 S.W.3d 698, 2007. Petition for discretionary review granted.

Appellate court found that deaf interpretation was inadequate because even though two interpreters were provided,

the one that sat with defendant only explained what was going on during the breaks. The Court also found that the trial court refused to provide a deaf-relay interpreter.

NUECES COUNTY v. SAN PATRICIO COUNTY, SUPREME COURT OF TEXAS, 246 S.W.3d 651, 2008. This case was pending in the County Attorney's Office when I was County Attorney from 1977-1984. It now may be finally over, unless the federal courts decide to get involved.

.39 ACRES, .748 ACRES, AND .5 ACRES (WITH IMPROVEMENTS) IN THE J. JOHNSON SURVEY, MARION COUNTY, TEXAS, AND A .22 CALIBER RUGER SEMI-AUTOMATIC PISTOL v. STATE, TEXARKANA COURT, 247 S.W.3d 384, 2008. No subsequent negative appellate history.

Continued on Page 9

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Judge Mike Westergren's Case Summaries Continued

Forfeiture of several tracts of land upheld because the owner was warned by the police that illicit activity was taking place on his property by a month-to-month tenant. Owner was never charged with a crime.

ROBERT LISTER v. M. WESLEY WALTERS, TEXARKANA COURT, 247 S.W.3d 381, 2008. No subsequent appellate history.

No appeal beyond County Court at Law of a small claim. There was some confusion about whether it was a small claim or a regular JP case, but the confusion was resolved in favor of small claim.

JOHN URANGA, III v. STATE, TEXARKANA COURT, 247 S.W.3d 375, 2008. Petition for Discretionary Review granted.

What happens when in the course of a run of the mill drug prosecution a juror discovers for the first time in evidence submitted in the punishment phase that the defendant was apprehended in her front yard and had done damage to her property? Nothing according the intermediate court, but stay tuned for the Court of Criminal Appeals.

SELENE GIRON v. JESUS RICARDO GONZALEZ, JR., EL PASO COURT, 247 S.W.3d 302, 2007. No subsequent appellate history.

This case is yet another example of the proposition that there cannot be a default judgment in family law matters involving the best interest of children.

IN RE SANJUANA RODRIGUEZ AND THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS, DALLAS COURT, 248 S.W.3d 444, 2008. No subsequent appellate history.

A trial court cannot order genetic testing after the expiration of the four-year statute of limitations under Tex. Fam. Code Section 160.607. Mandamus was granted preventing the testing because the requestor had not carried his burden to establish an exception to the statute.

SHERIFF K. AZEEZ v. STATE, COURT OF CRIMINAL APPEALS OF TEXAS, 248 S.W.3d 182, 2008.

All courts below upheld defendant conviction in municipal court for failure to appear under a Penal Code provision. The high court reasoned that the Transportation Code provision was the proper provision to prosecute under; and since the Penal Code provided for a higher penalty, defendant's due process rights were violated.

STATE v. JAMES CROOK, COURT OF CRIMINAL APPEALS OF TEXAS, 248 S.W.3d 172, 2008.

This case resolves the issue whether fines are to run concurrently or consecutively. The Court holds that they run concurrently so you only have to pay one fine.

CHANDELL ALLEN v. STATE, AUSTIN COURT, 249 S.W.3d 680, 2008. No subsequent appellate history.

Baby sitter cannot be held liable for cocaine possession. She did not have exclusive possession of apartment. Although she came often to the premises, there was no cocaine or cocaine residue on her person; and the cocaine was well-hidden in the apartment.

CARL R. PRUETT AND NATIONAL AMERICAN INSURANCE COMPANY v. HARRIS COUNTY BAIL BOND BOARD ET AL., SUPREME COURT OF TEXAS, 249 S.W.3d 447, 2008.

Supreme Court held that Bail Bond Board provision that bondsmen could not con-

tact arrestee until after 24 hours, violated bondman's right to free speech.

IN RE JACK JORDEN, M.D. ET AL., RELATORS, SUPREME COURT OF TEXAS, 249 S.W.3d 416, 2008.

We have previously noted a conflict among the intermediate courts as to whether Rule 202 depositions were proper in medical malpractice cases. The highest court has resolved the conflict and ruled that they are not proper.

MICHAEL JAMES MARTIN v. STATE, TEXARKANA COURT, 252 S.W.3d 809, 2008. Discretionary review granted.

Conviction for failure to properly register as a sex offender reversed due to insufficiency of evidence. The case seemed to turn on the failure of the county to strictly follow the requirements of the statute. It will be interesting to see what the Court of Criminal Appeals does.

LARRY ACKERS v. CITY OF LUBBOCK, AMARILLO COURT, 253 S.W.3d 770, 2007. Petition for review denied.

Plaintiff below was a juvenile who was arrested and referred to juvenile authorities simply for taking a picture at a basketball game in violation of a city ordinance. While not declaring the ordinance unconstitutional, the Court found that the trial court should not have summarily dismissed the suit for declaratory judgment and injunction on immunity grounds since the plaintiff was not seeking monetary damages.

CHARLES RAY GIBSON, JR. v. STATE, AMARILLO COURT, 253 S.W.3d 709, 2007. Petition for discretionary review refused.

The Court rejected the trial court's reliance on the community caretaker exception in denying the motion to suppress the drugs found in defendant's vehicle even

though police were responding to a parental concern about a child riding with the defendant from a sporting event. The child as observed in the vehicle was not in distress.

STATE v. DAVID MORALES, COURT OF CRIMINAL APPEALS, 253 S.W.3d 686, 2008.

Court of Criminal Appeals disagrees with the intermediate court's finding that failure to strike prosecutor from the jury was ineffective assistance of counsel.

IN RE STATE FARM LLOYDS, DALLAS COURT, 254 S.W.3d 632, 2008. No subsequent appellate history.

Gag order prohibiting the interviewing of jurors following a mistrial was improper.

LARRY GLENN HAYNES v. STATE, 1st HOUSTON COURT, 254 S.W.3d 466, 2007. Petition for discretionary review granted but affirmed.

In order to be a family member for purpose of felony criminal prosecution, the defendant and victim had to be living together contrary to definition in the Family Code urged by the state.

GENEVIA BUSHNELL, ET AL v. JANET MOTT, SUPREME COURT OF TEXAS, 254 S.W.3d 451, 2008.

Supreme Court reversed the intermediate and trial court for granting summary judgment in a dog attack case. The Court held that since plaintiff alleged that owner did nothing to stop the dog attack, that the case should be tried.