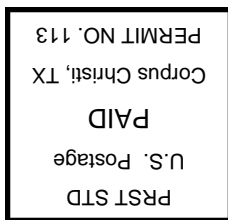




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THIS IS THE CBA NEWSLETTER
IMPORTANT NEWS INSIDE
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September Luncheon Meeting

Wednesday, September 10, 2008, 12:00 p.m.

Town Club

800 North Shoreline, 6th Floor, Center Elevators

Free Parking in Parking Garage

Speaker: The Honorable Jorge C. Rangel

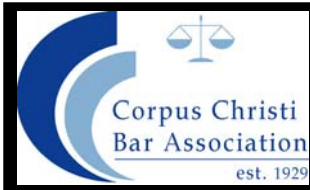
Title: "A Brief History of the First Amendment"

CLE Credit: .75 hour Participatory, **Constitutional Law**

Cost: \$19.00 per person for members, \$24.00 per person for non-members if reserved by noon, Tuesday, September 9, 2008. Call the Bar Office at 883-4022 to RSVP or e-mail us at sgonzales@corpusbar.com. All reservations must be paid for. The cost at the door will be \$21.00 for members, \$26.00 for non-members.

L NOTE 7

ADDED ADVANTAGE OF ADVANCE RESERVATIONS — THOSE WHO RSVP IN ADVANCE WILL HAVE THEIR CLE ATTENDANCE CARDS PRE-POPULATED SO ALL THEY HAVE TO DO IS TO SIGN THE CARD (AND, OF COURSE, STAY FOR THE PRESENTATION) IN ORDER TO OBTAIN THEIR CLE CREDIT



Newsletter

September 2008

New State Bar Rules Effective September 1st

Among the changes ordered by the Supreme Court effective September 1, 2008, are the following:

Article I, Section 7 has been amended so that the last sentence in that section reads as follows:

"A member's registered address will be used for receiving official notices from the State Bar of Texas including membership compliance information, member benefits, and disciplinary matters."

Article III, Section 2.A. has been amended

so that a member's "preferred address or post office box shall constitute the member's registered address . . ."

so that "[r]esidential addresses and phone numbers shall be considered confidential and will not be disclosed to the public unless authorized by the member."

so that "[i]f a member designates [his/her] residential address as the registered address and does not authorize disclosure to the public, the **member must provide an additional alternate address that may be disclosed to members of the public**" (Emphasis supplied)

and

so that a member is now **required** to notify the State Bar of Texas of any change in the member's registered (preferred) mailing address, telephone number, facsimile number, and e-mail address "**within thirty (30) days of such change.**" (Emphasis supplied)

Order from the 105th District Court Concerning Consolidating and Transferring Causes

At the request of the Honorable J. Manuel Bañales, the following portion of the "Order Consolidating and Transferring Causes" in case number 92-3329-G and case number 08-1742-D is quoted:

Under §155.201(a), Fam.C., and Rule 3(A)(6), Nueces County Local Rules, the [suit affecting the parent child relationship] must be consolidated into the divorce suit and transferred to the divorce court. Petitioner submitted a proposed Order that directs that the "lawsuits be consolidated under the newer and higher case number."

The Court has received similar motions that request that the related causes described in the motion be consolidated into the older and lower cause number. The Court has seen plenty of cases in which the movant misidentifies which cause is the older or newer cause or which has the lower or higher number, or which cause is to be consolidated or to which court should be transferred. . . .

What motivates this Court to expound on transfers and consolidations, particularly in family law cases, is to encourage counsel to avoid using the terms "the newer and higher cause number" or "the older and lower cause number." Counsel should simply identify which case, by name and/or number, should be consolidated with the other cause and transferred to what court. Clearly

spelling out and identifying the requested changes will avoid ambiguity, confusion, and misfilings.

New Corpus Christi Division Criminal Justice Act Panel Being Formed

The United States District Court for the Southern District of Texas has adopted a new Criminal Justice Act Plan entitled: "Corpus Christi Division CJA Plan." Under this Plan, the Court will establish a new panel in the Corpus Christi Division of approximately 100 attorneys who are eligible and willing to be appointed under the Criminal Justice Act to provide representation to defendants who cannot afford counsel.

All attorneys seeking CJA appointments in Corpus Christi must submit an application and be approved for CJA appointments, regardless of previous service. While previous membership on the CJA panel may be considered, it is not a guarantee of future membership. To facilitate the transition, however, attorneys currently on the Panel will continue to receive appointments until January 1, 2009, or until the new Panel is appointed. The Panel Selection Committee will meet to consider applications **in early November 2008**. Please submit your application on or before October 31, 2008, if you wish to receive appointments after January 1, 2009. Applications submitted after October 31st will be considered at the next regularly scheduled meeting of the Panel Selection Committee.

Attorneys who serve on the CJA Panel must be members in good standing of the Southern District of Texas, and have demonstrated experience in, and knowledge of federal practice and procedure. We are looking for attorneys with a commitment to representing individuals who are unable to afford adequate representation in the defense of federal criminal cases both at trial and on appeal.

Rates of compensation for panel attorneys in federal criminal cases are cur-

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Application for membership **MUST BE SUBMITTED ELECTRONICALLY**. Hard copies of the application will not be accepted. A link to the application is available on the website for the Southern District of Texas, www.txs.uscourts.gov. If you have difficulty accessing or completing the application, please contact Monica Seaman or Marianne Serpa with Clerk's Office for the United States District Court, Southern District of Texas, by phone at (361)888-3142, or by e-mail: Monica_Seaman@txs.uscourts.gov or Marianne_Serpa@txs.uscourts.gov. See also the CCBA E-Mail of August 28, 2008, for additional contacts.

Important Dates

Bold indicates seminar or new entry on the calendar

September 2008

- 1 — **CCYLA Board Meeting**
- 4 — **CCYLA Happy Hour at Havana Club**
- 10 — CCBA Luncheon
- 17 — **Criminal Defense Luncheon Naturalization Ceremony, Ortiz Center**
CCBA Board Meeting
- 24 — **Family Law Formation Luncheon**
- 25 — **Docket Call, Cassidy's Irish Pub**

October 2008

- 2 — **CCYLA Luncheon**
- 8 — CCBA Luncheon, Candidates Forum
Red Mass and Bishop's Reception
- 9 — **CCYLA Board Meeting**

- 15 — Criminal Defense Luncheon
CCBA Board Meeting
- 24 — **Judges' Fish Fry**
- 29 — **CBWLA Guardianship Seminar**

November 2008

- 6 — **CCYLA Board Meeting**
- 7 — **Advanced Personal Injury Seminar**
- 11 — Veteran's Day HOLIDAY
- 12 — CCBA Luncheon
- 19 — Criminal Defense Luncheon
CCBA Board Meeting
- 27 — Thanksgiving Holiday
- 28 — HOLIDAY

December 2008

- 11 — **Criminal Defense Holiday Party**
- 25 — **Christmas Holiday**
- 26 — **Holiday**

Should you have any questions about any of the events listed, please call 883-4022.

Texas Supreme Court's IOLTA "Comparability" Rule

On December 18, 2006, the Supreme Court of Texas entered a court order to amend Interest on Lawyers Trust Accounts (IOLTA) Rule 7 by creating a "comparability" rule that requires lawyers to place their IOLTA funds in accounts with financial institutions that pay interest rates comparable to interest paid on non-IOLTA accounts. The rule change went into effect March 1, 2007. Under the rule change, the Texas Access to Justice Foundation (TAJF) is responsible for certifying "eligible financial institutions" in which IOLTA may be placed. "Eligible financial institutions" are defined as financial institutions that pay interest rates on IOLTA accounts that are comparable to interest rates paid to non-IOLTA customers. The interest paid on IOLTA accounts helps finance civil legal services for the poor. TAJF distributes the funds to nonprofit, 501(c)(3) organizations

throughout Texas that have as a primary purpose the delivery of civil legal services to low-income Texans.

Coat & Warm Clothing Drive

The annual "Coat & Warm Clothing Drive" begins October 1st. Joy Stewart has volunteered to Chair the project this year. If you would like to help, please let Joy know at 993-9292 or call the Bar Office at 883-4022.

This is our first public service project of the Association's fiscal year. We will be collecting gently used coats and warm clothing as well as blankets. If you would like to donate new items, they will also be gratefully accepted. The coats, warm clothing, and blankets collected will be donated to homeless shelters in Corpus Christi for distribution to men, women, and children in need. We ask you to do a good deed: when you clean your closets or replace your coats, warm clothing, and/or blankets, please donate the old ones to this drive. The drive will end November 1st. Please stay tuned for further details.

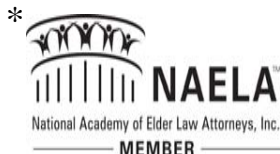
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Judicial Poll Coming Soon

The Judicial Preference Poll documents will be mailed the week of September 22nd to members whose dues for 2008—2009 have been paid per the bylaws. If you have any questions with regard to the judicial preference poll, please contact the CCBA office at 883-4022 or via e-mail to dking@corpusbar.com.

Red Mass October 8th Texas Attorney General Greg Abbott Keynote Speaker

This year's "Red Mass" will be Wednesday, October 8th, at 5:30 p.m. in the Corpus Christi Cathedral. The keynote speaker will be the Texas Attorney General Greg Abbott. While serving on the Texas Supreme Court, General Abbott received the following honors: "Jurist of the Year" from the Texas Review of Law & Politics; "Trial Judge of the Year" from the Texas Association of Civil Trial and

Appellate Specialists; and "Appellate Judge of the Year" from the Texas Chapter of the American Board of Trial Advocates. A reception will follow at the residence of Bishop Edmond Carmody. The Red Mass is a historical tradition that dates to the 13th Century in Europe and is attended by judges and attorneys and clergy of all faiths asking God to bless them at the beginning of the judicial year. Invitations will be sent shortly. Please RSVP to the CCBA office at 883-4022 or sgonzales@corpusbar.com.

Advanced Personal Injury Seminar November 7th

The Advanced Personal Injury Seminar will be conducted on Friday, November 7th at the Ortiz Convention Center. Steve Schiewtz is the course director. Look for the flyers in the mail in a couple of weeks.



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Judge's Fish Fry OCT 24th

IT'S BACK!! But unlike those who had to deal with the Terminator, all CCBA members are anxiously awaiting the return of the Judges' Fish Fry. It will be on Friday, October 24th, this year. Once again Doug Allison is graciously making his home and patio available as the site of the Fish Fry. As in the past, it will commence at 5:30 p.m. and end at 8:00 p.m. What better way to spend the last Friday evening in October than socializing with members of the local judiciary and your colleagues, eating great fish (John Sixta has again volunteered to cook), and drinking some beer (wine for "sophisticated" non-hackers, tea for those trying to create a mature, responsible impression)? And who can beat the price — Judges and a guest are free; members pay only \$10.00 for themselves and \$10.00 for their (non-lawyer) guests. Non-members will pay \$20.00 for themselves and \$20.00 for their guests. **Reserve Friday, October 24th!!**

2008 Corporate Counsel Forum October 1st in Dallas

The 2008 Corporate Counsel Forum on ethics and corporate compliance will be held Wednesday, October 1st, at the Belo Mansion in Dallas. This symposium is billed as the "flagship" corporate ethics and corporate compliance program in Texas each year. It is presented by The Texas Center for Legal Ethics and Professionalism. There will be 3.5 hours of ethics continuing legal education credit. Issues covered include but are not limited to "The Corporate Counsel's role in Ethics Sustainability," "The Corporate Counsel's Relationship with Auditors and the Board Audit Committee," and "The Perspective of the Audit Committee and the Expectations of Corporate Counsel." You can register online at www.txethics.org.

CCBA at CBWLA's August "Un-Wined"

The Honorable Rene Haas, hostess of the Coastal Bend Women Lawyers Association's August "Un-Wined" and the Coastal Bend Women Lawyers Association graciously invited the membership of the Corpus Christi Bar Association to join them at their "Un-Wined" on August 27th. All who attended were treated to the hospitality of Judge Haas and David Perry while enjoying delicious food and refreshing beverages.



The Honorable Rene Haas, the "Un-Wined" hostess, with the Honorable J. Bonner Dorsey at the CBWLA's August "Un-Wined"

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Robert Zamora and Danny Tower were among the CCBA members in attendance



Audrey Mullert Vicknair, CCBA President, and the Honorable Robert M. Blackmon

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**CCBA August Luncheon:
Rebecca Rivers Kieschnick
Honored, Judge Klager Speaks**

Immediate Past President Rebecca Rivers Kieschnick was honored at the August CCBA Luncheon for her service as Presi-



President Audrey Mullert Vicknair passes President's Plaque to Rebecca Rivers Kieschnick.



Jerry Dorsey, Secretary, introduces the Honorable James E. Klager, the Luncheon Speaker

dent for 2007 — 2008. Her many achievements were chronicled by President Audrey Mullert Vicknair prior to presenting Ms. Kieschnick with a plaque commemorating and thanking her for her service as President. The Honorable James E. Klager was the speaker. His topic was : "The New Magistrate Court — Its Conception, Birth, & Life." Judge Klager was instrumental in obtaining the passage of the statute creating the Nue-

ces County Magistrate Court which should help probation officers, the Sheriff's Department, the District and County Courts at Law, and help reduce the Nueces County Jail's population. State Representative Abel Herrero was thanked by Judge Klager for his help in obtaining the statute's passage.



The Honorable James E. Klager explains the benefits of the new Magistrates Court.

Pictorial Directory Correction
On Page 58, please amend Patricia Shackelford 's listing by **deleting** the line "Member of the PeryHaas Group."



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Judge Greenwell Criminal Defense Section Speaker

The Honorable Thomas Greenwell was the speaker at the August Criminal Defense Section Luncheon. His presentation was "Ethics in the Criminal Defense



The Honorable Thomas Greenwell addressing the August Criminal Defense Section

Setting." More than 40 lawyers attended the Luncheon, one of the best attended in months.

CCYLA "Over the Hill" Party

The Corpus Christi Young Lawyers Association held its annual "Over the Hill" Party on Thursday, July 31st, at B & J's



Sara Giddings and Brain Navararez at the "Over the Hill" Party

Pizza on SPID. The "Over the Hill" Party honors those who have achieved sufficient "maturity" by June 1st of the year to

be graduated from the organization. All in attendance enjoyed the comradery, pizza, and liquid refreshment. Discretion being the better part of valor and keeping with tradition, the names of those graduating are not being published.

Doug Chavez Recognized by Texas Access to Justice Committee

In the Summer 2008 issue of *Legalfront*, the Texas Access to Justice Committee recognized Doug Chavez, a Fellow, American College of Trial Lawyers. Mr. Chavez was recognized for his membership on this year's Trial Academy Faculty and his volunteering of his time to provide free continuing legal education in trial advocacy to the legal aid lawyers of Texas.

Judge Mike Westergren's Recent Case Summaries

IN RE ALICE ANDREWS, Relator,
COURT OF APPEALS OF TEXAS,
FIFTH DISTRICT, DALLAS, 231 S.W.3d
495, 2007 — No subsequent appellate
history

Mandamus granted to require enforcement of vexatious litigation protection,
Tex Civ. Prac. & Rem. Code Ann. Section 11.051 (2002). The Respondent has brought numerous pro se cases in the past. The trial court incorrectly assumed that since he had a lawyer in the present action that the statute did not apply.

IN RE CHRISTUS SPOHN HEALTH
SYSTEM CORPORATION D/B/A
CHRISTUS SPOHN HOSPITAL SHORE-
LINE, COURT OF APPEALS OF TEXAS,
THIRTEENTH DISTRICT, CORPUS
CHRISTI – EDINBURG, 231 S.W.3d
475, 2007 — No subsequent appellate
history

This is a rare case where arbitration although provided for in employment contract was not required due to conduct of party requesting arbitration.

CONT'D ON PAGE 13

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Judge Westergren's Recent Case Summaries Continued from Page 12

ONE FORD MUSTANG, VIN 1FAPP40471F207859 v. THE STATE OF TEXAS, COURT OF APPEALS OF TEXAS, TENTH DISTRICT, WACO, 231 S.W.3d 445, 2007 — No subsequent appellate history

Purchaser of vehicle was involved in drug activity that otherwise would have required forfeiture of vehicle, but seller who had no knowledge of drug activity was entitled to get his vehicle back.

C.L. WESTBROOK, JR. v. PEGGY LEE PENLEY, SUPREME COURT OF TEXAS, 231 S.W.3d 389, 2007

In this case the Supreme Court ruled that an action for breach of confidentiality by a preacher who is also a licensed counselor for church discipline could not be sustained. It would be prudent to

advise clients who do not want their confidential matters brought before the congregation, not to seek marriage counseling from a pastor in their church.

IN THE INTEREST OF J.R.S. AND H.L.M.S., CHILDREN, COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH, 232 S.W.3d 278, 2007 — No subsequent appellate history

This case is another example of how difficult it is to terminate a father's parental rights just because he is in prison. In this case the father is serving a 65 year sentence. I believe from the facts as recited that it could have been achieved but the case is a good read for what not to do when attempting to have a stepparent adopt a child in a similar situation.

JOSE RAYNUNDO ZAPATA v. THE STATE OF TEXAS, COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON, 232 S.W.3d 254, 2007 — No negative subsequent appellate history

Hearsay evidence from wife complainant resulted in reversal. Police officer was the only witness in case for family violence.

MIKEY'S HOUSES, LLC v. BANK OF AMERICA, N.A., COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH, 232 S.W.3d 145, 2007 — No negative subsequent appellate history

A previous case cited here held that contractual waiver of the right to a jury trial was OK. This case held that it was not. Wonder how the Texas Supreme Court will decide this issue once it decides to decide?

RONALD W. DISNEY, ET AL. v. BEVERLY GOLLAN, COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS, 233 S.W.3d 591, 2007 — No subsequent appellate history

This case illustrates the difference between a settlement agreement and a shareholder's agreement. A shareholder's agreement requires compliance with Tex. Bus. Corp. Act Ann. art. 2.30--1 (2003).

DARRELL JAY KEEHN v. THE STATE OF TEXAS, COURT OF CRIMINAL APPEALS OF TEXAS, 233 S.W.3d 348, 2007

The Court of Criminal Appeals upheld the defendant's Fourth Amendment right to contest a warrantless search of a vehicle in his driveway. The Court cited a three pronged test and found that the intermediate court had failed to address the third prong of the test.

EX PARTE ALFREDO PRUITT, COURT OF CRIMINAL APPEALS OF TEXAS, 233 S.W.3d 338, 2007

The Court of Criminal Appeals upheld the intermediate court's ruling that jeopardy applies to a subsequent prosecution involving the same child where there had been an acquittal if offenses were incidental to or "subsumed" within the offenses for which defendant was acquitted in the prior trial.

JANE GILMORE, ET AL v. SCI TEXAS FUNERAL SERVICES, INC. ET AL, COURT OF APPEALS OF TEXAS, TENTH DISTRICT, WACO, 234 S.W.3d 251, 2007 Petition for Review denied

This is a rare reversal of a jury trial in a case involving a funeral home's lowering device's failure to properly lower a casket at a burial ceremony. The Court faulted the jury for finding no mental anguish for such an event.

EX PARTE MARK ANTHONY ZAPATA, COURT OF CRIMINAL APPEALS OF TEXAS, 235 S.W.3d 794, 2007

Failure to advise defendant that complaining witness had recanted accusation before plea was entered required the granting a habeas corpus.

SHARAN ANN WILLIAMS v. THE STATE OF TEXAS, COURT OF CRIMINAL APPEALS OF TEXAS, 235 S.W.3d 742, 2007

The highest court found that taking a child from a house with utilities to a house without did not constitute a crime even though the candle light that was required for light caused a fire which killed the children. I guess what the court is ruling is that stupidity does not constitute a culpable mental state.

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