Fly Me to the Moon at the Austin Bar Foundation Gala

The 16th annual Austin Bar Foundation Gala will be held on Sat., Jan. 26, 2019 at the Fairmont Austin, located at 101 Red River St. in downtown Austin. The event is being chaired by Amanda Arriaga along with decorations co-chairs Chari Kelly and Sandy Bayne, and auction chair Laura Merritt.

Proceeds from the Gala benefit the Austin Bar Foundation. The Foundation supports legal programs such as the Self-Represented Litigant Project, the Veterans Assistance Programs, Austin Adoption Day, and the CANLAW Clinics, which provides estate planning services for cancer patients and their families. The Foundation also awards approximately $20,000 annually in grants to area legal-related programs such as CASA of Travis County, American Gateways, Volunteer Legal Services, Texas Accountants and Lawyers for the Arts (TALA), and many more. In addition, the Foundation offers the Justice Mack Kidd fund to confidentially assist attorneys suffering from depression or related mental illness get the help and support they need.

The Gala will feature silent and live auctions, and a raffle for numerous gift baskets valued at more than $500 each. Attendees will have the opportunity to purchase $50 “Grab for Good” bags, each containing a piece of jewelry, and $25 will allow them to play “Heads or Tails,” giving them the chance to win a large Yeti cooler stocked full of assorted items.

The evening will begin with a pre-party for Austin Bar Foundation Fellows, Life Fellows, and the 2019 Gala award winners and their table guests. The David H. Walter Community Excellence award, the Larry F. York Mentoring award, and the Joseph C. Parker Jr. Diversity award will all be presented at the pre-party reception.

A cocktail party will be held for all ticket holders at 6:30 p.m. followed by dinner at 7:30 p.m. Dinner will include the presentation of the Distinguished Lawyer awards and a live auction, presided over by the Siren Sisters Auctioneers.

Following dinner, guests can try their luck at the casino tables, or dance to music provided by a 15-piece modern big band, The Vintage 15.

Visit www.muradauctions.net/austinbargala to purchase tickets or tables or to become a sponsor. Discount tickets are available for AYLA members.

Honoring Austin lawyers who have excelled in their profession and service to the community is the highlight of the evening. The Foundation is pleased to announce this year’s award recipients.

DISTINGUISHED LAWYER AWARD
The Distinguished Lawyer Award recognizes the dedication and hard work of attorneys who have practiced law for 30 years or more and have significantly contributed to the legal profession and the greater community.

Claude E. Ducloux
Claude E. Ducloux is a trial attorney board-certified in civil trial and civil appellate law. A former president of the Austin Bar, he has chaired multiple major State Bar of Texas-related entities, including the Texas Bar Foundation, the Board of Legal Specialization, the Texas Bar College, and the Texas Center for Legal Ethics. He served as Assistant General Counsel to the State Bar, where he prosecuted disbarment cases, and he has been a sought-after speaker throughout the United States on legal ethics, law office management, and trial-related topics.

Always the entertainer, Ducloux worked his way through law school both on the GI Bill and by playing piano. In 1992,
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FEATURED ARTICLES

1. Fly Me to the Moon at the Austin Bar Foundation Gala

2. YMCA Youth and Government Program

3. Lawyer Referral Service Thanks their Board of Trustees

4. 17th Annual Austin Adoption Day Creates 24 New Families

DEPARTMENTS

6. President’s Column

12. Briefs

14. Pro Bono Spotlight

15. Opening Statement

16. Third Court of Appeals Civil Update

18. Third Court of Appeals Criminal Update

20. Federal Civil Court Update

21. Federal Criminal Court News

22. Entre Nous

24. AYLA

26. Practice Pointers

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NEWS & ANNOUNCEMENTS

Texas Access to Justice Foundation Luncheon with the Supreme Court Kicked Off Pro Bono Week

EVENTS & MORE

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YMCA Texas Youth and Government Program Seeks Attorney Volunteers for Judicial Section

Since 1946, YMCA Texas Youth and Government has provided numerous opportunities for students to learn about civic engagement. Through a hands-on experience of Texas government in four areas—judicial, legislative, state affairs, and media—the program’s goal is to help students become civic-minded and increase their political awareness and understanding. The program serves more than 2,000 students across 130 communities in Texas; however, the program would not be successful without the help of many volunteers.

You are invited to join the program as a first-time volunteer or as a returning volunteer in the judicial section to see these students in action. As an judicial evaluator, you will use a rubric to help score students who have learned roles as attorneys, witnesses, bailiffs, and judges in both mock and moot courts. The judicial section is where more than half of the students participate, and more than 200 volunteers, are needed. There are morning, afternoon or full-day volunteer spots available for the Texas State Conference on Jan. 25 and 26, 2019. Volunteer training webinars will be available prior to conference dates.

For more information about the role of judicial evaluator, please visit https://ymca-texasyg.org/get-involved/volunteer or contact program coordinator, Mikayla Mutscher, at Mikayla.Mutscher@austinymca.org.
The Lawyer Referral Service of Central Texas (LRS) appreciates the dedicated individuals who serve on their board of trustees and is grateful for the time and effort they devote to the organization. The board plays a vital role in LRS’s ability to fulfill its mission and to provide access to justice to the Central Texas community.

Members of the LRS board of trustees are volunteers nominated and elected by current board members and the executive director. The board is made up of a group of fifteen influential individuals who are a mixture of local attorneys, non-attorneys, and judges. The group of lawyers represent a variety of practice areas, including family, criminal, immigration, personal injury, and estate planning, just to name a few. The attorneys on the board are current members of LRS who also obtain referrals to potential legal clients. In addition to working hard for the organization, they take the opportunity to assist the public by offering potential legal clients guidance and representation. Not just an ordinary group of individuals, members of the LRS board of trustees are the advisers, decision-makers, problem solvers, advocates, and supporters of LRS as they seek to provide access to justice to the Central Texas community.

LRS is fortunate to have a dedicated and proactive board that serves LRS, its staff, and the Central Texas legal community.

2018 LRS Board of Trustees

• Julia G. Benkoski, The Law Office of Julia G. Benkoski;
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• Adrian Resendez, The Resendez Law Firm;
• Lisa Rush, Library Manager, Travis County Law Library and Self-Help Center;
• Matt Shanks, Law Office of C. Matthew Shanks (LRS board chair);
• Jason Snell, The Snell Law Firm; and
• Carol Wood, retired, (LRS secretary/treasurer).

LRS and its board of trustees would also like to recognize and thank two long-time members who have recently retired their seats on the board. Leo E. Fouست, of the Law Office of Leo E. Fouст, served for 15 years. Judy Kostura, of Judge, Kostura & Putman, served for 27 years. LRS will miss the knowledge they shared and wishes them both great success in their future endeavors.

Kostura reflected on her time with LRS by saying, “Having served on the LRS board of trustees for over 25 years, I have seen it grow from a department of the Austin Bar Association into an independent public service organization. LRS takes seriously the dual missions to make affordable legal services available to the community and to increase the number of clients for its member attorneys. I am proud to have been associated with the LRS staff and other board members during these decades of change to the legal landscape in Central Texas.”

Dear Lawyer Referral Service Board of Trustees,

Thank you for your time added on to the many roles in life—career, family, and other volunteer opportunities.

I am thankful for the dedication you give to govern our organization appropriately, for overseeing the tools to serve our clients, and for your leadership and guidance.

On behalf of myself and the LRS intake staff, we appreciate your commitment.

Annie Melendez, LRS Executive Director
Can you believe it’s the holidays again? Is it me, or does it feel like Michaels and Hobby Lobby just finished removing their last holiday decoration from the 75-percent-off clearance aisle?

That being said, I love the holidays! It’s the time when our law firms, friends, families, and extended social groups celebrate. We have parties, cocktail hours, white-elephant gift exchanges, and ugly sweater parties. But more importantly, it’s the time when everyone seems to be in a better mood, we gather with family and friends, and we at least consider what it would be like to live in a world where we focus on helping those less fortunate. That’s right, I’m one of those people who wishes it were the holiday season every day. How would we be different if we wished peace on earth and good will to all every day?

For the past several years, one of my holiday traditions has been volunteering at the Austin Young Lawyers Association’s “Reindeer Games.” My wife, Chari, and I look forward to this event. She typically helps with face painting or an arts and craft project, and I help entertain the kids with some magic tricks from my youth. And it wouldn’t be a holiday season without attending ZACH’s “A Christmas Carol,” which has quickly become Austin’s must-see holiday show. (DISCLAIMER, I’m general counsel and a member of the ZACH board of directors.)

Once the traditionally religious holidays end, we quickly usher in a new year. There’s something magical about January 1st. While one can certainly argue it’s an arbitrary celebration, I find myself feeling renewed, refreshed, and full of hope at each new year. Whether logical or not, the new year gives me a sense of new opportunity, new goals, and new hope.

And the new year means it’s time for another Austin Bar Foundation gala! This year, we will all have the chance to celebrate together at the “Fly Me to the Moon” gala, featuring a retro, 15-piece orchestra. What better way to overcome the post-holiday blues than to take a step back in time to the era of the great American songbook?

Finally, the new year brings a time of change for our judiciary. I hope you’ll join me and many other Austin attorneys as we swear in our new judges. At 1:30 p.m. on Jan. 3, 2019, we’ll swear in Chantal Eldridge as judge of the 331st Travis County District Court, and at 3 p.m., on Jan. 4, 2019, Maya Guerra Gamble and Catherine Mauzy will be sworn in as judges of the 459th and 419th Travis County District Courts. Dates have yet to be determined for the swearing in of Precinct 3 Justice of the Peace Sylvia Holmes, and for the four new justices to the Third Court of Appeals: Thomas Baker, Chari Kelly, Edward Smith, and Judge Gisela Triana.

I hope when you walk into Michaels and Hobby Lobby and feel that tinge of cynicism, you’ll remember you’re a lawyer. You were taught to be cynical. Now put that feeling aside and remember, this is the one time of year we come closest to the more perfect union we all strive to reach.

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17th Annual Austin Adoption Day Creates 24 New Families

In the “Wizard of Oz,” Dorothy clicks the heels of her ruby slippers together, closes her eyes, and repeats three times, “there’s no place like home.” Having a place to call home became a reality on Nov. 1, 2018 for 51 children at Gardner-Betts Juvenile Justice Center, as 24 families celebrated the 17th annual Austin Adoption Day. The children adopted at the event were among thousands across Texas who are in foster care because they were victims of abuse or neglect.

Along with more than a dozen attorneys, Justice Eva Guzman of the Texas Supreme Court, and Chief Justice Jeff Rose of the Third Court of Appeals, volunteered their time to finalize the adoptions of these children and their new families. Other members of the judiciary who participated were Judges Darlene Bryne, 126th District Court; Karin Crump, 250th District Court; Gisela Triana, 200th District Court; Jan Soifer, 345th District Court; Dustin Howell, 459th District Court; and Amy Clark Meachum, 201st District Court; along with Associate Judges James Arth, Andy Hathcock, Ami Larson, Aurora Martinez Jones, and Leonard Saenz.

“The real stars of Adoption Day are the families,” said attorney Denise Hyde, chair of the Austin Bar’s Adoption Day Committee. “They have opened their hearts and their homes to create new families.”

Austin Adoption Day is presented as a partnership between the Austin Bar Association, Austin Bar Foundation, Texas Department of Family and Protective Services, and Court Appointed Special Advocates, with the assistance of Travis County Juvenile Probation, Partnerships for Children, the Travis County Office of Child Representation, and the Travis County Children’s Protective Services Board.

November is National Adoption Month and Austin Adoption Day is part of the nationwide effort to celebrate adoptive families and draw attention to the continuing need for foster and adoptive homes. Across Texas, there are 3,754 children waiting for adoption, including 122 in Travis County. To see some of them and to learn how foster care and adoption works, please visit www.adoptchildren.org or call the Texas Adoption Information Line at 800.233.3405.

Austin Adoption Day would not happen without the generosity of many donors, including major donors Cook-Walden/Dignity Memorial, the Austin Bar Association’s Family Law Section, Ballet Austin, Kendra Scott, Whitestone Jewelry, and Joseph Gagen, Attorney at Law. A complete list of sponsors can be found below.

TOP RIGHT: Characters from The Wizard of Oz brighten the day of a family at Austin Adoption Day. BOTTOM RIGHT: Apples the Clown provided red noses to add to the festivities.
he and like-minded Austin lawyer-musicians, produced the first Bar & Grill Show with its centerpiece vocal group, the Bar & Grill Singers. Performances by the Bar & Grill Singers eventually contributed more than $300,000 in proceeds to pro bono causes over the next two decades.

Ducloux has prepared more than 400 CLE presentations and 107 Entre Nous columns for Austin Lawyer. He has been awarded the Texas legal profession’s highest awards for Pro Bono Service (2000), Professionalism (2002), CLE (2011), and Legal Ethics (2013). He proudly served in the US Army’s First Cavalry Division.

Jo Ann Merica
Jo Ann Merica is a partner at Duggins Wren Mann & Romero, where she represents plaintiffs and defendants in broad-based civil litigation practice, including real estate, construction, commercial, consumer, family, and administrative law disputes. She has taught Trial Advocacy as an adjunct professor at the University of Texas School of Law since 1993. She was selected for inclusion in the Texas Super Lawyers List, a Thompson Reuters service, from 2009 to 2015, 2017, and 2018.

Merica’s legal career also reflects a commitment to professional leadership and community service. A David H. Walter Community Excellence Award winner, she served as President of the Austin Young Lawyers Association, the Texas Young Lawyers Association, and the Austin Bar Association. She served as chair of Texas Lawyers for Texas Veterans, a State Bar program that established pro bono advice clinics around the state to serve Texas veterans. Each bar association led by Merica has won first-place honors and awards for projects created and implemented during her leadership, including the “And Justice for All” specialty license plate created by the Texas Young Lawyers Association, which has raised more than $250,000 for legal services to the poor in civil matters.

Merica has an extensive list of awards and accomplishments, including AYLA Outstanding Alumnus, Austin Business Journal Women of Influence, Travis County Women Lawyer’s Association Pathfinder, two State Bar of Texas Presidential Citations, Military Law Section’s Col. Bryan S. Spencer Award, Texas Veteran Commission’s Leadership Award, and the Judge Sam Williams Award.

Judge Sam Sparks
The Honorable Sam Sparks is a Senior U.S. District Judge for the Western District of Texas. Judge Sparks was appointed to this position in 1991 by President George H.W. Bush. Through the years, Judge Sparks has received numerous awards and recognitions, the most memorable of which include being selected as Trial Judge of the Year by the Texas Chapters of the American Board of Trial Advocates in 2005; receiving the Sandra Day O’Connor Jurist Award from the American College of Trial Lawyers in 2010 in recognition of his independence, courage, and commitment to the Rule of Law; receiving the Lifetime Achievement Award from the University of Texas School of Law in 2011; and being one of five recipients of the Texas Bar Foundation’s Outstanding 50 Year Lawyer Award in 2014. On December 31, 2017, Judge Sparks took senior status but continues to manage his docket and assist with cases in the Western District.

Judge Sparks’ professional associations include: Member of the Texas Supreme Court Advisory Committee (1978-91); elected Fellow, American College of Trial Lawyers (1983); elected Advocate, American Board of Trial Advocates (1996); member, Board of Directors, and vice president of Texas Association of Defense Counsel; President, Board of Directors, El Paso Bar Association; charter member and president, El Paso Chapter of American Board of Trial Advocates; member, Texas State-Federal Judicial Council (1993-94); 2007 Federal Judicial Liaison to the State Bar of Texas Board of Directors; American College of Trial Lawyers Judiciary Committee (2006-2014), Jury Committee (2006-2014), and Ad Hoc Committee on Relationships with the Judiciary (2005-2006); and Foundling Master, Lloyd Lochridge American Inn of Court (2009).

DAVID H. WALTER COMMUNITY EXCELLENCE AWARD

The David H. Walter Community Excellence Award is presented to an attorney or judge who has made a significant impact in the community and, at the same time, raised the profile of the legal profession.

Fred Sultan
Fred Sultan is an attorney with the firm of Foley Gardere. He has been licensed to practice law in the State of Texas since 1997, and he is also licensed in all Texas federal district courts, the Fifth Circuit Court of Appeals, and the United States Supreme Court. Sultan helps individuals and businesses throughout Texas and the United States with commercial litigation and appeals involving a broad range of business disputes, including employment, contract, business tort, and trade secret-related claims.

Sultan served as the long-time chair of the Capital Area AIDS Legal Project, and he is currently the immediate past-chair of the AIDS Services of Austin Board of Directors, having previously served as that board’s chair and treasurer. He is a co-founder of the Austin LGBT Bar Association, a former chair of the LGBT Law Section of the State Bar of Texas, and a current member of the board of the National LGBT Bar Association. In 2017, Sultan received the Austin LGBT Bar Association’s
Award of Excellence. He also was named the Outstanding Director of the Austin Bar Association for the 2012-2013 bar year.

LARRY F. YORK MENTORING AWARD
The Larry F. York Mentoring Award is given to a local lawyer or judge who has demonstrated exceptional skill and generosity in mentoring younger members of the bar. Nominees must have practiced at least 10 years and have served as role models and counselors to other lawyers, distinguishing themselves as leaders of their profession while fully embracing life’s experiences.

Jeff Civins
Jeff Civins is a senior counsel in the Austin office of Haynes and Boone. He has been an environmental law practitioner since 1975. Considered to be “one of the deans of environmental law in Texas” according to Chambers and Partners (USA 2018), Civins is a regent of the American College of Environmental Lawyers and organizer of the Thomson Reuters Texas Practice two-volume treatise on Texas Environmental Law. A former chair of the Environmental and Natural Resources Law Section of the State Bar of Texas, he is the standing chair of its Annual Texas Environmental Superconference, now in its 31st year.

Throughout his career, Civins has enjoyed mentoring young people. Before law school, Civins taught science in NYC schools and, for the past 27 years, he has been an adjunct professor at the UT School of Law. For the past 15 years, he also has been actively involved in the Central Texas Chapter of Communities in Schools, a non-profit that helps keep at-risk kids in school.

JOSEPH C. PARKER, JR. DIVERSITY AWARD
This award honors a firm or an individual who has led the way in bringing diversity to Austin’s legal community and who exemplifies Rev. Joseph C. Parker, Jr.’s commitment to championing the equal, ethical, and fair treatment of all people, while raising awareness of the need to diversity our legal community.

Toya Cirica Bell
Toya Cirica Bell is the Deputy Chief Ethics Officer for the Texas Health and Human Services System. As a career attorney with over 25 years in the public and private sectors, she is committed to serving the profession and the community. Bell has served as the President of AYLA and as Assembly Speaker of the American Bar Association’s Young Lawyers Division. She is currently a member of the State Bar of Texas District 9 Grievance Panel, Vice Chair of the Austin Bar Foundation for which she leads the community grants program, and a member of the Austin Bar’s Diversity Committee, which provides clerkship opportunities to law students of diverse backgrounds.

Over the last year, as board chair of Leadership Austin, Bell led a collaboration with the mayor’s office of the City of Austin and other stakeholders to bring the transformative Beyond Diversity Training program to the greater Austin community. She is the 2018 recipient of the Mission Capital Community Leader of the Year Award and the Austin Under 40, Mentor of the Year Award. She was also selected by Rice University to represent her peers as a member of the Association of Rice University Board of Directors. Bell was honored by the Travis County Women Lawyers’ Association in 2016 with an Attorney Award in recognition of her contributions to the minority community.
NEW MEMBERS

The Austin Bar welcomes the following new members:

Stephen Barron
Leslie Basque
Cheyenne Bell
Paige Duggins-Clay
Michael Hiller
Theresa Langley
Nicole Leonard
Elizabeth Mazzarella
Darin Mitchell
Ross Reyes
Dana Rieder
Eli Roth
Rachel Rynders
Kirpal Singh
Tiffany Talamantez
Natalie Tarnosky
Joulia Tchembrovskaia
Jason TenBarge
Jessica Witte

AWARDS

- Sam Denton, with Denton & Fahring, has been elected to membership in the Fellows of the Texas Bar Foundation. Fellows of the Foundation are selected for their outstanding professional achievements and their demonstrated commitment to the improvement of the justice system throughout the state of Texas.

- The Taxpayers Against Fraud Education Fund awarded Patrick O’Connell with the Lawyer of the Year Award at their Conference and Awards held in Washington, D.C. in October.

- The UT School of Law Alumni Association held its 2018 Alumni Awards Gala in October. Karen Burgess, fellow of the International Academy of Trial Lawyers and elected treasurer of American Board of Trial Advocate’s National Board of Directors, was awarded Alumni Mentor of the Year.

MOVING ON UP

- Chris Ritter has been named director of the Texas Lawyers’ Assistance Program (TLAP) of the State Bar of Texas. Ritter, co-chair of the Austin Bar’s Health and Wellness Committee, joined the TLAP staff in 2014. Previously, he was an assistant district attorney and a partner in two prominent civil litigation firms. He recently completed a master’s degree in clinical mental health counseling from Lamar University.

NEW TO THE OFFICE

- Greenberg Traurig announced the addition of Cara Kelly as shareholder in the firm’s Global Litigation Practice in Austin. Kelly focuses her practice on complex business disputes, concentrating on real estate litigation, securities litigation, business torts, and breach of contract disputes, as well as advising clients on mitigating risk and streamlining internal controls.

- Mike Thompson, Jr. has been hired as associate general counsel for the Texas Association of Counties.
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Adoption    Grandparent or Non-parent Rights    Collaborative Law    High-Asset Divorce    Modifications of Custody, Possession & Support
Answering the Call of Conscience
One Attorney’s Response to the Crisis on Her Doorstep

BY SARAH SCOTT

Just a few months ago, Austin attorney Elizabeth Lippincott couldn’t bear to watch the news. Now she’s making it.

“This summer when the family separations [at the U.S.-Mexico border] started... that was just more than I could handle,” Lippincott said. “I couldn’t deal with it if I didn’t take initiative and try to get involved somehow.”

So Lippincott, who has a self-described “teaspoon full” of knowledge about immigration matters, decided in June to start volunteering to counsel detained asylum seekers at the T. Don Hutto ICE detention center in Taylor.

By mid-July, CNN interviewed her about her role in re-uniting a Honduran political dissident with his 5-year-old son after they were separated at the border. Eris Ramirez was detained and then released from a center in Pearsall with little warning—and no way to get to New York, where his son was waiting for him. Lippincott heard about Ramirez’s plight from friend and local immigration attorney, Kate Lincoln-Goldfinch, who was representing another member of the same family. So she decided to make the two-hour drive to pick him up.

After he stayed at her home, she and her husband Chris put Ramirez on a flight to New York. Lippincott and Lincoln-Goldfinch worked with a slew of nonprofit agencies and volunteers to reunite Ramirez with his son within a week.

It was exactly the outcome Lippincott hoped to facilitate when she spoke to Lincoln-Goldfinch after initially seeing stories about families being separated at the US-Mexico border.

Lincoln-Goldfinch interned with Lippincott in 2006 during her tenure as a director of the Texas Justice Initiative, part of a nonprofit that provides legal representation for victims of sexual and domestic violence.

“She was great at [representing survivors of violence], but she really found her passion as an immigration lawyer” at the UT Law Immigration Clinic, Lippincott said. “I love it that now she’s getting to teach me.”

After talking with her former intern, Lippincott attended the Austin Bar Association training in June that Lincoln-Goldfinch and the UT Law Immigration Clinic helped coordinate on counseling asylum seekers. Although she has been able to talk through her questions about immigration law with Lincoln-Goldfinch, she is adamant that virtually any attorney can help, especially with the crucial initial step of preparing asylum seekers for their credible fear interview with an asylum officer.

“Anyone who has a bar card and has a little bit of litigation experience prepping witnesses—even if they just did trial advocacy in law school—can do this,” she said. “It’s the most basic witness prep imaginable, and a lot of it is just orienting people to the American legal system.”

Lippincott still volunteers at the Hutto detention center to help detainees with credible fear interviews. These interviews are the first step to obtaining asylum in the U.S., but detainees are isolated and often without legal counsel. Preparing them can make the difference between beginning the asylum process in earnest or being put on the path to deportation.

Without a lawyer, Lippincott says, detainees with credible asylum claims are left in the dark.

“They don’t get any effective guidance as to what factors the asylum officer is going to look at,” she said. “The government officials asking questions in the credible fear interview “are just going through the questionnaire... if the asylum seeker can just have an hour’s preparation with a lawyer, they understand how to tell their story to fit the asylum officer’s checklist. It can make all the difference in the world.”

In their interview, applicants need to be able to explain why they left their home country; how the violence or persecution they suffered was related to a protected status, like their religion, ethnic identity, or political allegiance; and why they can’t safely move to another part of their home country. In Honduras, for example, many political dissidents suffer persecution and beatings at the hands of police for advocating for their pro-democracy views.

“The tragedy and the opportunity is that there’s an international humanitarian crisis on our doorstep,” Lippincott said. “It’s right here. It’s 45 minutes from downtown Austin. That gives us an opportunity and—in my conscience—gives us a mandate to do what we can to help.”

Scott is an attorney at Hanna and Plaut, and a member of the Austin Bar Pro Bono Committee.

INFORMATION
American Gateways is a nonprofit that facilitates group pro bono visits to the Hutto Center. Get more information or sign up at least three days in advance at www.americangateways.org.

VOLUNTEER
American Gateways is looking for volunteers at its Austin office. Email Rebeccal@americangateways.org if you’re interested.

• Visit the “Volunteer” page under the “For Attorneys” tab at austinbar.org for a list of volunteer opportunities and to view the Austin Bar’s Credible Fear & Immigration Bond Hearing CLE video from June 2018;

• RAICES seeks volunteers for its accompaniment program, legal clinics, post-release support, and translation services. For more information, go to www.raicestexas.org/volunteer; and

• Email Kate Lincoln-Goldfinch at kate@lincolngoldfinch.com to be added to her email newsletter list with information and updates on ongoing volunteer opportunities.
Somewhat Qualified, Part 2
Qualifying Legal Conclusions

BY WAYNE SCHIESS, TEXAS LAW, LEGALWRITING.NET

Legal matters are often qualified: some conclusions might merit absolutely and certainly, while others deserve possibly and likely. So legal writers justifiably use qualifiers. Last month I discussed qualifying factual statements; this month I discuss qualifying legal conclusions.

Relying on a survey of legal-writing textbooks, I can report commonly recommended qualifiers for legal conclusions: likely, probably, plausibly, possibly, and should.

The most frequently recommended are likely and its forms, with probably coming in second. Many of the textbooks surveyed discuss the traditional, predictive memorandum, in which a lawyer predicts an outcome that may be less than certain. But these words are useful in other contexts, too—whenever a lawyer gives advice or offers a recommendation.

Likely and its forms are part of a useful continuum from positive to negative certainty. At one end is a direct yes or will—a legal result will happen; the outcome is certain. At the other is no or will not. In between are likely and unlikely, which might be further qualified: highly likely, highly unlikely, and so on.

Now the advice.

1. DON’T QUALIFY.
As with much writing advice for adverbs, adjectives, intensifiers, and qualifiers, the best advice is to avoid them when you can. Bryan Garner recommends that legal writers “toss out timid phrases.” What’s more, he calls these qualifiers Fudge Words and offers as an undesirable example, “It would seem to appear that…. That’s a trifecta: three Fudge Words in one clause: would, seem, and appear.

The urge to qualify is natural, but legal writers must be careful of “overhedging.” Granted that legal outcomes are rarely certain, we sometimes overcorrect and qualify too much. It’s a natural tendency, and novices might be particularly vulnerable.

In fact, a colleague in another state forbids his first-year students to qualify conclusions at all. He believes it forces them to research carefully, analyze precisely, and write clearly. But even if you don’t enforce a prohibition, it’s a good default: don’t qualify. For example:

Before: A possible lawsuit by Heather Green against her employer, Manzares & Cline LLP, could likely survive a motion to dismiss.

After: A lawsuit by Heather Green against her employer, Manzares & Cline LLP, will likely survive a motion to dismiss.

2. QUALIFY AND EXPLAIN.
When you decide that you must qualify your conclusion, that you must hedge, do your best to explain why—immediately and concretely. Explaining has two benefits.

You benefit. Forcing yourself to articulate why you’ve qualified your conclusion can lead to insights about the level of qualification. Maybe you over- or under-qualified your conclusion, which you can see now that you’ve had to explain it. Revise accordingly.

Readers benefit. Explaining why you qualified a conclusion serves clients and decision-makers. They already know that likely means better than 50-50 but not a sure thing. By explaining, you empower them to ask additional questions or pursue other options.

Here’s an example:

A lawsuit by Heather Green against her employer, Manzares & Cline LLP, will likely survive a motion to dismiss. Although other employees may sue for retaliatory discharge because it encourages them to report illegal activities, two cases hold that in-house counsel may not sue. Attorneys have an independent, ethical obligation to disclose illegal activity. But

Green, an associate at the firm, did not represent her employer as an attorney, as in-house counsel do. Despite the absence of precedent, it is likely that because she is not under the same ethical obligation to disclose illegal activity, she deserves the incentives provided by a retaliatory-discharge suit.

So set your default at no qualifications, but when you must qualify, be clear about why.

Footnotes:
The following are summaries of selected civil opinions issued by the Third Court of Appeals during October 2018. The summaries are an overview; please review the entire opinions. Subsequent histories are current as of Nov. 2, 2018.

PERSONAL INJURY: Broker not vicariously liable for agent’s negligence.
Stroup v. MRM Mgmt., Inc., No. 03-17-00543-CV (Tex. App.—Austin Oct. 18, 2018, no pet. h.) (mem. op.). While driving to a car wash, Taylor, a realtor with MRM, was involved in an automobile-motorcycle collision with Stroup. Stroup’s guardian sued MRM, alleging it was vicariously liable for Taylor’s tortious conduct. The trial court granted summary judgment for MRM. MRM’s contract with Taylor provided that she was an independent contractor. Stroup argued that the contract’s “dress policy,” which mentioned keeping a realtor’s car clean, demonstrated MRM’s right of control over Taylor. The court of appeals concluded the contract term was merely MRM’s effort to assist realtors to become more successful; it did not negate the independent contractor status. The court affirmed.

ADMINISTRATIVE LAW: Board immune from lawsuit challenging construction of order.
City of Wimberley Bd. of Adjustment v. Creekhaven, LLC, No. 03-18-00169-CV (Tex. App.—Austin Oct. 9, 2018, no pet. h.) (mem. op.). While incarcerated in federal prison, father requested a jury trial in his divorce proceeding. The trial court reset the trial and provided 60 days’ notice of the new setting. Father did not appear through counsel or by phone. A prison official notified the court that father refused to participate by phone. The trial court granted the divorce and appointed mother sole management conservator. On appeal, father alleged that he was denied his right to a jury trial and denied due process. The court of appeals concluded father waived his right to a jury trial by failing to appear and object to a bench trial. Because he waived his right to a jury by failing to appear, the trial court did not violate any due process rights. The court affirmed on the merits, but reversed on the award of costs against father in light of his uncontested affidavit of inability to pay.

ADMINISTRATIVE LAW: Providers not entitled to contested-case hearing under agency audit rules.
Dentistry of Brownsville, PC v. Texas Health & Human Servs. Comm’n, No. 03-17-00552-CV (Tex. App.—Austin Oct. 5, 2018, no pet. h.) (mem. op.). Providers received federal incentive money to transition to an electronic health records technology program. HHSC’s audit revealed that Providers had not qualified for the incentives and ordered recoupment. The trial court granted HHSC’s plea to the jurisdiction. Providers argued that they were entitled to a contested-case hearing under the APA. The court of appeals concluded that there was no right to a contested-case hearing by statute or under the APA. HHSC audit rules permit an ad hoc review panel as used in this case. Without authority to have a contested-case hearing, HHSC could not have acted ultra vires by failing to provide such hearing. The court affirmed in part and reversed in part.

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a court may not consider the merits of a subsequent habeas application unless it contains sufficient facts establishing that: (1) the current claims and issues have not been and could not have been presented previously (2) because the factual or legal basis for the claim was unavailable on the date the applicant filed the previous application. The court concluded that Smith failed to present any newly discovered evidence to support his actual-innocence claim, and he failed to raise his other complaints in his prior habeas application.

LEGALITY OF TRAFFIC STOP: Reasonable suspicion supported officer’s decision to stop motorist for running red light, even though officer could not see color of light facing motorist. State v. Salas, No. 03-16-00325-CR (Tex. App.—Austin May 31, 2018, no pet.) (mem. op., not designated for publication). Salas, who had been charged with DWI, filed a motion to suppress, asserting that the arresting officer lacked reasonable suspicion to initiate a traffic stop on her vehicle. At the suppression hearing, the arresting officer testified that as he was stopped at an intersection, he observed Salas’s vehicle cross the intersection perpendicular to him at the same time as his light turned from red to green. The officer suspected that Salas had run a red light, even though he could not see the color of the light facing Salas. The officer acknowledged that it was possible that Salas’s light could have been green at the time she crossed the intersection, but only if the traffic light had malfunctioned. A video recording of the traffic stop, showing Salas crossing the intersection as the officer had described, was also admitted into evidence. The trial court granted the motion to suppress, finding that Salas “did not run a red light.” The appellate court reversed, concluding that “the legality of the traffic stop does not depend on whether Salas ‘ran a red light’ but on whether the officer had reasonable suspicion to believe that she did.”

ADMISSIBILITY OF PRIOR CONVICTIONS: District court did not abuse its discretion in admitting evidence of appellant’s prior convictions under Rule of Evidence 609. Jones v. State, No. 03-17-00720-CR (Tex. App.—Austin May 31, 2018, pet. ref’d) (mem. op., not designated for publication). Jones, who was tried for cocaine possession and unlawful possession of a firearm by a felon, testified in his defense. During the State’s cross-examination of Jones, the district court admitted evidence of Jones’s prior convictions. The appellate court affirmed, observing that Rule 609 required that “[e]vidence of a criminal conviction offered to attack a witness’s character for truthfulness must be admitted if: (1) the crime was a felony or involved moral turpitude, regardless of punishment; (2) the probative value of the evidence outweighs its prejudicial effect to a party; and (3) it is elicited from the witness or established by public record.” The only disputed element in this case was the probative value of the evidence versus its prejudicial effect. The court concluded that the district court did not abuse its discretion in admitting the evidence, after engaging in an extensive analysis of the following factors: (1) the impeachment value of the prior crime, (2) the temporal proximity of the past crime relative to the charged offense and the witness’s subsequent history, (3) the similarity between the past crime and the offense being prosecuted, (4) the importance of the defendant’s testimony, and (5) the importance of the credibility issue.

Cases summarized are from May 2018 and subsequent histories are current as of Nov. 1, 2018.

SUBSEQUENT HABEAS-CORPUS APPLICATIONS IN COMMUNITY-SUPERVISION CASES: District court did not abuse its discretion in denying habeas relief. Ex parte Smith, No. 03-17-00628-CR (Tex. App.—Austin May 24, 2018, pet. ref’d) (mem. op., not designated for publication). Smith sought habeas relief after being placed on community supervision for a drug offense. In his first habeas application, he asserted ineffective assistance of counsel. The district court denied relief. Smith later filed a second habeas application, this time asserting that he was actually innocent, that the indictment failed to charge a crime, and that the statute charging the offense was void for vagueness. The district court again denied relief, and the appellate court affirmed. The court observed that article 11.072 of the Texas Code of Criminal Procedure generally restricts habeas applicants to “one bite of the apple.” Thus,
SUZANNE COVINGTON
Senior District Judge

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Plaintiffs filed a class action against Saybolt, alleging a willful violation of the FLSA. The district court found Saybolt did not comply with FWW requirements because Plaintiffs were not being paid a “fixed salary” due to the incentive payments. In the damages hearing, Saybolt argued the “regular rate” for determining overtime should be based on hours actually worked, not a 40-hour workweek. The district court held that Saybolt was judicially estopped from contesting the damages model and awarded damages. Both parties appealed.

In the appeal, the Court found, in accordance with the First Circuit and Department of Labor guidance, that the FWW method is available only for a fixed weekly salary, not for a fixed minimum or base weekly salary. Further, the damages model should calculate the “regular rate” divisor to include all hours actually worked even when the FWW method has been violated. See Singer v. City of Waco, 324 F.3d 813, 823 (5th Cir. 2003). Saybolt, however, had not demonstrated the FWW method was appropriate; therefore, the proper overtime premium calculation was one-and-one-half the regular rate, rather than only one-half. The Court vacated the liquidated damages award, as it held the district court erred in its damages methodology.

**IP/TRADE SECRETS:** While the Louisiana Uniform Trade Secrets Act, LUTSA, preempts a common-law claim for conversion of trade secrets, it does not preempt a common-law conversion claim for confidential information that is not a trade secret. Brand Services v. Irex Corp., No. 17-30660 (5th Cir. Oct. 17, 2018): Petitioner Brand Services alleged that a former employee Stanich stole trade secrets and confidential and proprietary information when he went to work for a competitor, Respondent Irex Corp. Brand filed suit under LUTSA and for common-law conversion. The district court granted summary judgment as to the conversion claims, holding they were preempted by LUTSA. LUTSA’s preemption provision provides that the statute “displaces conflicting tort, restitutionary, and other laws of this state pertaining to civil liability for misappropriation of a trade secret,” but does not affect “contractual or other civil liability or relief that is not based upon misappropriation of a trade secret.” La. Stat. § 51:1437. The Court noted that despite the existence of this language in the many states that have passed the UTSA, courts in those states have come to varying conclusions about the scope of the preemption provision. Thus, looking to Louisiana’s intermediate courts, the Court noted that those courts had twice found that the preemption provision did not apply to closely related claims which nonetheless did not narrowly concern the conversion of trade secrets. The Court therefore reversed the district court, finding that LUTSA does not preempt conversion claims for confidential information that does not qualify as a trade secret.

**CIVIL PROCEDURE:** A district court has jurisdiction to grant a Rule 60(b) motion for relief from judgment, even when such an order sets aside the decision of an appellate court, regardless of whether providing an authorization of release is sufficient to satisfy a party’s ongoing discovery obligations. Hernandez appealed.

The Fifth Circuit Court found that a district court has jurisdiction to grant a Rule 60(b) motion even where the judgment being set aside is that of the appellate court. The Court found no reason why that rule, articulated in Standard Oil Co. of California v. United States, 429 U.S. 17, 17 (1976) (per curiam), should apply only when the appellate court affirms and not when it reverses. Importantly, the release did not relieve Hernandez of any further discovery obligations with respect to his medical records under the circumstances, because once Plaintiff’s counsel had actual possession of such documents, he had an obligation to produce them to RSI regardless of their availability through another source under Rule 26(e). The Court affirmed.
Lies, Damned Lies, and Statistics

BY DAN DWORIN

Drug offenses and immigration-related offenses continued to make up the bulk of the federal criminal caseload in 2018, according to the Administrative Office of U.S. Courts.¹ Out of 81,370 criminal cases filed nationwide, 24,872 were drug offenses (including 3,799 offenses involving marijuana).

Most immigration-related criminal cases were prosecutions for “illegal re-entry,” which criminalizes an alien who returns to the U.S. after being removed or deported by an immigration judge.² The total number of illegal re-entry cases in 2018 was 19,214.

Not surprisingly, the majority of those cases were filed in border districts, including the Western District of Texas. Out of a total of 7,578 criminal cases filed during this period in the Western District, 4,035 were for that offense.

Overall, criminal filings were up about eight percent nationwide compared to the prior 12-month period. The most dramatic increase was in the Southern District of California, where criminal filings increased 96 percent (after growing 18 percent last year). The Western District of Texas, which includes Austin, saw a 21 percent increase in criminal filings (compared to a 3 percent jump the prior year). Drug cases accounted for 777 criminal filings in the Western District, notably only four of those were for marijuana offenses.

Firearms offenses accounted for 10,742 of the new criminal cases filed nationwide during this time period; the total number filed in the Western District of Texas was 386. Most federal firearms cases involve possession by a convicted felon, which can also be prosecuted in Texas state courts. Law enforcement prefers to bring these cases in federal court when the defendant’s prior criminal history is fairly extensive or involves any violence, since offenders are practically guaranteed a fairly long prison sentence if sentenced according to the U.S. Sentencing Guidelines.

A common (if admittedly self-interested) critique of local federal law enforcement priorities by defense attorneys is that the resources and expertise of the Justice Department and its sister agencies should be brought to bear on financial fraudsters, rather than street-drug dealers. Statistically speaking, the Western District is actually bringing a surprisingly large number of fraud cases, compared with their overall numbers. In the period ending March 31, 2018, 238 fraud cases were filed in the district. For context, the U.S. Attorney’s Office for the Southern District of New York, which famously handles many large Wall Street fraud matters, filed a relatively modest 332 fraud cases in this period. The total number of cases brought in the Manhattan-based district was only 1,429 during this time period, so obviously a higher percentage involved financial crime but given the much heavier total caseload thrust on border-state prosecutors, it appears that our U.S. Attorney’s office is to some degree prioritizing financial fraud cases.

Footnotes
1. All of the data in this article can be found here (and the data is for the period from April 1, 2017 to March 31, 2018): http://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2018
2. 8 USC § 1326
“TRUTH” GOES ON TRIAL

BY CLAUDE DUCLOUX

SCENE: A courtroom where a trial is about to commence. A jury is about to determine whether Truth actually exists anymore, or if it should be declared dead. The bailiff enters.

BAILIFF: All rise. The Honorable Mona Fide, Judge Presiding.

JUDGE: Ladies and gentlemen, as you heard in the opening statements, we have all had a great deal of trouble finding Truth lately. The Plaintiff, “Belief,” has asked that Truth be declared dead and we substitute Belief in its place and stead. The Defendant, “Integrity,” admits that Truth has indeed been hard to find, but submits Truth be declared dead. The bailiff enters.

PLAINTIFF: We object, your honor, nothing we have heard yet proves that Truth exists.

DEFENSE: May I proceed, your Honor, to provide that proof? JUDGE: Proceed.

DEFENSE: We call Authentication to the stand [proceeds] Authentication, haven’t you always been the right-hand man of Truth?

AUTHENTICATION: Absolutely, I ensure we keep a standard of honesty, accuracy, and reliability strong and effective.

DEFENSE: Then you are aware that Truth exists.

AUTHENTICATION: Of course it exists. My job is to guard and support Truth. I’m like Truth’s butler.

Unlike these other fakers and pretenders, I do not create Truth, I merely corroborate it. The product of that corroboration is “Reliability.”

DEFENSE: But the claims here are that, unless we see Truth, the void should be filled with Belief.

AUTHENTICATION: But Belief is unreliable, movable, and changeable. Truth is not like that.

PLAINTIFF: I object to the implication that my client, Belief, is unreliable. I call Candor to the stand. [proceeds] What is your role, Candor?

CANDOR: My job is simply to ensure you are adequately worried, and not too reliant on facts you don’t like. If people don’t ascribe to Belief, my job is to enlist Fear and Bias to destroy those facts.

DEFENSE: [rising suddenly] Objection! You’re not Candor, you’re Duplicity! Move to strike, your Honor!
Testimonial from John Rubin, The Rubin Law Firm, PLLC, ATX Bilingual Mediation:

In 2016, my wife and I were in the market for a new/larger home in our same school district and neighborhood. We hired Sara based on strong recommendations from others. Unfortunately, not any fault of Sara’s, the homes available in the specific neighborhood we wanted to be in just didn’t fit. Sara stayed on the case and continued tirelessly working for months and months, showing us all sorts of different options. One day, the wife and I decided to shift course entirely and look for a lot to build on. Without batting an eye, Sara changed directions and helped us find exactly what we were looking for. Her patience and understanding are infinite. And her knowledge of the market unparalleled. You could not ask for better.
AYLA PRESIDENT’S COLUMN

JORGE PADILLA, JACKSON WALKER

Giving Back During the Season of Giving

Thanksgiving has come and gone, and the holiday season is in full swing. Like I did when I was younger, I still look forward to this time of year. The days (sometimes) get a little cooler, the football games are more exciting, and it seems like there is something good to eat everywhere you turn. I also look forward to a few extra days spent with family and friends.

In addition to the food, gifts, and other fun, it’s nice to look back and reflect on the positives while also resolving to improve for the upcoming year. For many, this improvement might be learning a new area of the law or growing your practice. If you’re like many of the attorneys I know, it also means finding the best use of your non-billable time to provide a service to others in your community.

Help bring joy to local families this holiday season.

This year, AYLAs Reindeer Games event will partner with YMCA’s Christmas Party to ensure local kids have a great holiday. AYLAs will collect donated toys and gifts for 300 Austin-area children. The donated items will be gift-wrapped by AYLAs volunteers on site at the YMCA event on December 9, 2018. For more information, or if you’d like to donate toys or volunteer, contact David King at DKing@gdhm.com, or Rachael Jones at rkjones963@gmail.com.

Mentor a young lawyer or student.

I don’t know any lawyers who’ve said they’ve received too much advice during their careers. Many would have welcomed having an experienced lawyer answer questions about the legal profession, which can be so difficult to navigate. If you have wisdom to impart or are looking for a mentor, there are several ways to get connected with young lawyers and law students. The Austin Bar Association, the Travis County Women Lawyers’ Association, and the University of Texas School of Law each offer mentoring programs.

Help kids at the courthouse with some books.

If you have spare children’s books, why not donate them to ensure they are put to good use? You can drop off new or gently used books to BookSpring, which collects tens of thousands of books for families in the greater Austin area each year. Visit www.bookspring.org to find out how.

You can also drop off children’s books the next time you visit the courthouse. Through the Lawyers for Literacy program, in conjunction with BookSpring, a bookshelf for kids is located outside of Judge Karin Grumps 250th District Court. The books are available for children visiting the courthouse to take home for free. This program was such a success that it served as a model for a Texas Young Lawyer’s Association statewide initiative to provide access to books for children who visit courthouses throughout the state.

Volunteer for MLK Day of Service

If you’re looking to start 2019 on the right note, plan to set aside a few hours on Martin Luther King Jr. Day—Jan. 21, 2019. For the sixth straight year, AYLAs will organize a Day of Service, inspired by the teachings of Dr. King. There will be a variety of opportunities available, including park beautification through the Austin Parks Foundation, meal preparation for families staying at the Ronald McDonald House, and a pro bono legal clinic held at Community First! Village. Stay tuned for more details and registration information.

Take on a pro bono case with VLS.

Your law license affords you the ability to access and work through the justice system in a way not available to non-lawyers. That access may seem mundane during our everyday lives, but can make a huge difference to an indigent client with nowhere else to turn. There are varied and countless types of opportunities for pro bono service. Contact Volunteer Legal Services of Central Texas at www.vlscot.org to find one or to get on VLS’s email list. Your gift of legal representation to someone in need may be the best gift you can give this holiday season.

UPCOMING EVENTS

THURSDAY, DEC. 13
AYLA/HBAA Holiday Party
5:30 – 7 p.m.
The Townsend, 718 Congress Ave.

SUNDAY, DEC. 9
AYLA Reindeer Games
YMCA East Communities, 5315 Ed Bluestein Blvd
1 – 3 p.m.
To donate and volunteer, visit www.ayla.org

THURSDAY, JAN. 17
AYLA Docket Call
5:30 – 7 p.m.
Location TBD

MONDAY, JAN. 21
Day of Service
To volunteer, email debbie@austinbar.org
Member Spotlight: Nicole Conger

Introducing Nicole Conger—AYLA’s Member Spotlight:

AYLA: Tell us about yourself and your practice.

Conger: I own The Law Office of Nicole Conger. I was born and raised in Oklahoma City as an only child with two parents who dedicated their entire existence to ensure I was happy. I remember the day I received the acceptance letter from McCombs School of Business at UT Austin. Moving to Austin was one of the most noteworthy decisions I ever made.

After graduating from UT, I went to law school at St. Mary’s University School of Law. I embraced my sexuality and was openly gay throughout my time there. I formed lifelong friendships with others, and continued to realize my gift from God in the intelligence and intellect that He blessed me with. I came back to Austin and was introduced to Labor and Employment law. I realized that being an attorney is the divine path God created for me, and healing others is a natural progression that follows. I help people in their times of deepest sorrows after losing their jobs, or being discriminated against at work. I stand up for women, men, people of color, people of any age, race, religion, and national origin. I also stand up for members of our LGBT family. I echo their fears, and help them to fight against companies who allow hate to transpire in the workplace.

AYLA: What’s your favorite moment of your career so far?

Conger: I wanted to own my own firm, yet never quite knew that I had the means. My law firm just celebrated its one-year birthday—a moment I will never forget. I received the Top 50 Texas Women Lawyers in Diversity Award, as well as becoming a Fellow to the Texas Bar Foundation.

AYLA: How long have you been involved in AYLA and what’s been your best AYLA experience so far?

Conger: I’ve been involved in AYLA since 2014. Holiday Reindeer Games is always the most delightful event, as it highlights children and the legacy we create for them.

AYLA: What’s your best advice for fellow attorneys?

Conger: DREAM large, as the world is at your fingertips. I want the universe to remember me as a person who gave others the gift of light in times of darkness. The world needs good-hearted, non-judgmental, positive, and compassionate people. We all have made it to the table through tribulations that tested our bravery. Showing gratitude—no matter what shape or size—has allowed even more energy to flow from my pores.

AYLA: What do you enjoy most about living in Austin?

Conger: I love this electric and vibrant city, where art, culture, diversity, music, and growth all run interchangeably. I engage in events that promote diversity and our community. I am a Federal Club Member of the Human Rights Campaign, and I am actively involved in AIDS Services of Austin.

AYLA Partnership with Community First! Village Off to a Strong Start

On Tuesday, Oct. 23, 2018 the Austin Young Lawyers Association hosted its first legal clinic at Community First! Village, a 51-acre master-planned community that provides affordable, permanent housing and a supportive community for the chronically homeless in Central Texas. The event was made possible by a grant from the Texas Young Lawyers Association.

More than 25 attorney and paralegal volunteers assisted the community’s residents in completing their “life documents,” including the medical power of attorney form, directive to physicians form, and statutory durable power of attorney form. Volunteers assisted 41 individuals. The attorney and paralegal volunteers were able to assist 41 individuals, almost one-sixth of the community’s residents. Dinner was provided and volunteers visited with residents to learn more about Community First! Village in addition to providing legal assistance.

AYLA is partnering with Community First! Village to host three more legal clinics at the Village as well as a social services fair in 2019. The next clinic will be held on Monday, Jan. 21 (MLK Day) and will provide residents an opportunity to seek help with any legal issues they may be experiencing. AYLA will also host a third clinic and social services fair on Saturday, April 6, followed by a final clinic next summer.

We are so thankful for our volunteers who made this inaugural clinic such a success. All attorneys and paralegals are invited to join us for the next clinics. Email Debbie Kelly at debbie@austinbar.org for more information or to sign up.
Benefits of Early Mediation

BY DIRK JORDAN

You have a case in which the maximum damages are around $25,000.00. You bill by the hour, and as you start developing the case you know that your attorney’s fees will soon eclipse the amount in controversy. Your client is not happy. The client thought it would be faster and cheaper than it is.

In these types of cases, I recommend attempting to mediate the case early, even before you file the lawsuit. Ask your client and your opponent:

1. How quickly do you want the dispute resolved?
2. Are the important documents freely available, or are the parties willing to exchange documents and information freely and without delay?

I recently had a case with about $20,000 in dispute. The opposing counsel and I agreed to mediate the case without exchanging written discovery. It was a simple breach of contract case and we both knew the strengths and weaknesses of each other’s case. We scheduled a half-day mediation, and were able to settle the case without running up exorbitant attorney’s fees.

Advantages of early mediation:

1. If it settles, the attorneys’ fees of both sides are lower. We have all been involved in cases where the size of attorneys’ fees makes settlement close to impossible. This is particularly true when the defendant has an insurance policy that is wasting, which means that all fees and expenses reduce the coverage limits.
2. Clients are happier. Typically, clients do not enjoy litigation. At the start of the case the plaintiff is enthusiastic, wanting you to right the wrong that has been suffered, and the cost is irrelevant; it is the principal that matters. Enthusiasm wanes as the plaintiff pays larger bills and does not see when it will end. Defendants are never happy to be in litigation. I have never had a client who wished that litigation could last longer and cost more. Your client will be happier with you if you are able to resolve the dispute quickly.
3. In some cases, the longer the litigation lasts, the more entrenched each side becomes in its position, making settlement difficult. As they spend money and time, clients become angrier at the other side for not seeing things as they do and simply capitulate.
4. If the case does not settle, you may have the opportunity to evaluate how the opposing party will appear to a jury. You also have a chance to see how your client responds. You learn about the other side’s case and something about yours as well.
5. If you are going to jury trial in Travis County, it fulfills the mediation requirement.

Early mediation is not suitable for every case. But for those in which it is suitable, discuss it with opposing counsel to see if it is a viable option. You may have a happier client.
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