Our New Home on Judges Hill

The Austin Bar Foundation has made the commitment to purchase the Herblin-Shoe House, an historic home at 712 West 16th Street. This 4,500 sq. ft. property is located at the corner of 16th Street and West Ave., in the historic Judges Hill neighborhood.

Thanks to the generosity of the Lola Wright Foundation, the new Austin Bar headquarters will be named “The William B. Hilgers House on Judges Hill,” or simply “Hilgers House.”

The Austin Bar Association was founded in 1893. In our 126-year history, we have never had a permanent home. Finally, with a one-time investment, members of Austin’s legal community can have a place to call home. Hilgers House will be the home of the Austin Bar—the home of the legal community—our home.

Moving to Hilgers House will enable us to budget smarter. It will also meet the needs of our membership, providing a location that is close to downtown and only a few blocks from the soon-to-be-constructed new Travis County Civil and Family Courts Complex. Large meetings will be held in an off-site rented space in a central location.

The Austin Bar has been in its current location at 816 Congress Ave. since 2003, the same year it changed its name from the Travis County Bar to the Austin Bar. No one could have predicted the changes in Austin’s downtown real-estate market in the ensuing 15 years. Our current lease will be up in 2020. If we stay, our rent will double, causing us to pay an additional $200,000 more each month in rent.

Prior to moving to 816 Congress, we held large meetings off-site and we will resume that practice after we leave. As nice as our large seminar room is, it alone will cost $192,000 annually to keep after 2020. It is much more cost effective to rent meeting space on an as-needed basis.

Bottom line: We simply can’t afford to stay at 816 Congress anymore without significantly raising member dues. Moving to our new home on Judge Hill will allow us to continue to serve our members and the community in the most fiscally responsible way possible.

The Austin Bar Foundation is very grateful to the Lola Wright Foundation for its donation of $100,000 with a matching gift.

Hilgers House will be the home of the Austin Bar—the home of the legal community—our home.

ABOUT WILLIAM B. HILGERS

“My main mission has been to provide legal services for those who may not always find the legal system accessible.” – William B Hilgers

William B. Hilgers became an attorney and CPA thanks to the GI Bill—his compensation for performing more than 30 missions as an Air Force navigator in World War II.

In his 61-year career as an attorney, Hilgers served in many positions of leadership: President of the Austin Bar Association, and as chairman of the board of the State Bar of Texas and the Fellows of the Texas Bar Foundation. He helped create the Texas Center for Legal Ethics and Professionalism, and served as its board chair.

Hilgers’ career and his life exemplify the highest standards of professional ethics, integrity, and dedication to one’s community. The Austin Bar is honored to have its new headquarters bear his name.

continued on page 8
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NEWS & ANNOUNCEMENTS
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A Letter to the Austin Bar

EVENTS & MORE
FEB 18 Austin Bar Office Closed for
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2019 Judicial Evaluation Poll Conducted In February

The Austin Bar Association’s biennial Judicial Evaluation Poll will be available for members Feb. 1 – 15, 2019. Austin Bar and AYLA members will receive an email from Ballot Box Online with a link to the online evaluation poll.

Members’ dues must be current to ensure active membership status in order to participate in the poll. Contact Membership Director Carol Tobias at carol@austinbar.org if you are unsure of your membership status.

The Austin Bar has conducted its Judicial Evaluation Poll since 1978. In 2005, the policy of conducting the poll every two years was established. The poll gives Travis County attorneys an opportunity to evaluate the performance of area judges—from justices of the peace to federal district court judges—with the results released to the public as a community service.

Please look for the email on Feb. 1 and take a few minutes to complete the survey by the Feb. 15 deadline. The email will be sent from noreply@ballotboxonline.com. Please make sure to whitelist this email address to ensure it is not blocked by your spam filter.

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Travis County Civil and Family Courts Complex Update
Timeline for Construction Revealed

Travis County held an open house on Nov. 27, 2018 to update the public on the latest developments on the long-awaited Travis County Civil and Family Courts Complex. The county has been working on plans to replace the Heman Marion Sweatt Courthouse, which opened in 1931, for more than a decade. Early last year, the Travis County Commissioners voted to solicit proposals from private partners interested in both putting up land for the project and providing a building. A consortium called the Travis County Courthouse Development Partners (TCCDP) was selected to develop a 430,000-square-foot civil and family courthouse facility.

The facility will be built on Guadalupe Street, between 17th and 18th streets. This location is a mere four blocks away from the new headquarters of the Austin Bar Association–Hilgers House on Judges Hill. The plans for the new courts complex includes the following:

- Large multi-purpose meeting room;
- 25 courtrooms;
- Community plaza;
- State-of-the-art law library and self-help center;
- Gathering spaces for attorney-client conferences;
- Space for short-term child drop-off center for parents using the courthouse;
- Dedicated, appropriate spaces for child testimony;
- Four-level underground parking garage with 390 spaces;
- Secured judicial access and circulation;
- Separate and secured entrance for persons in custody;
- Separate and secured holding and circulation areas for persons in custody;
- Accessible to people who walk, bike, drive, and take the bus (with 15 bus routes nearby); and
- Utilizes “Great Streets” concept: focuses on walkability and public engagement with 18-foot sidewalks, tree plantings, benches, and bike racks.

In addition to the parking garage located underneath the court complex, five additional public parking garages are located within a two-block radius of the facility.

The county expects construction to start in 2019, with an anticipated completion date of 2023. For more information, visit www.tccourts.com.
Call for Austin Bar Board Nominations
Consider a Leadership Position in 2019

Austin Bar Association members are leaders in their firms, their communities, and their world. They work to make a difference and care deeply about the law, while juggling family commitments and responsibilities to multiple civic groups, non-profits, and faith organizations. This is especially true of those who serve in leadership positions. The dedicated, passionate, and talented lawyers who serve on the Austin Bar Board of Directors or as officers, along with those who chair its committees and lead its sections, are in the unique position of significantly impacting the Austin legal profession and the community at large.

If you have been active in the Austin Bar and would like to join this dynamic leadership team, now is the time. If you are interested in running for a position as an officer or on the Board of Directors for the Austin Bar, please send a resume, along with the desired position, by Thursday, Feb. 28 to: Austin Bar Association, ATTN: Nominating Committee, 816 Congress, Suite 700, Austin TX 78701.

Officer positions are one-year terms; director positions are for two years. Nominees for the office of president-elect shall have served at least two years of the Board of Directors prior to assuming office.

The Nominating Committee’s decision will be announced on or before Friday, March 15. The number of candidates to be nominated for each position shall be left to the discretion of a majority of the Nominating Committee. Any qualified member not receiving the nomination of the committee may be included on the ballot by submitting a written petition signed by 75 members of the Austin Bar. Such written petitions must be submitted by Wednesday, April 10.

Voting shall be conducted via electronic ballot and at the annual meeting of the membership on Friday, May 3.

If you have questions about the nomination or election process, contact Austin Bar executive director, DeLaine Ward, DeLaine@austinbar.org.

Interested in running for a position as an officer or on the Board of Directors for the Austin Bar? Send a resume, along with the desired position, by Thursday, Feb. 28.
The Austin Bar Supports our Community
Members Participated in Veterans Day Parade and Operation Turkey

Members of the Austin Bar’s Community Engagement Committee turned out in their Austin Bar t-shirts carrying signs to show their support of our veterans at Austin’s annual Veterans Day Parade on Sunday, Nov. 11, 2018.

Austin Bar members who are veterans themselves, along with those who volunteer their time at the Austin Bar’s Free Legal Advice Clinic for Veterans, were given a special invitation to participate.

Signs publicizing the Free Legal Advice Clinic for Veterans where displayed as the group marched the parade route along Congress Avenue, from the Ann Richards Bridge to the Capital.

Later in the month, members of the Community Engagement Committee participated in Operation Turkey, preparing food for the homeless on Thanksgiving Day.

Anyone wishing to participate in future Community Engagement Committee activities should contact committee chair Blair Dancy at bdancy@cstrial.com.

LEFT: Austin Bar members Sara Wilder Clark and son with Kennon Wooten and daughter volunteering at Operation Turkey. ABOVE: Members of the Austin Bar and their families came out to support our troops at the 2018 Veterans Day Parade.

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Our New Home on Judges Hill

continued from cover

This generous gift makes the Lola Wright Foundation the lead donor in the Our Home on Judges Hill capital campaign. The campaign will be launched over the next few months to cover the costs of renovations and upgrades that come with converting a house into an office space. The house underwent a major three-year renovation from 2011-14, so there are no major renovations needed at this time. Tentatively, the move is scheduled for early summer. More details and information will be made available regarding the move and the Our Home on Judges Hill capital campaign in the coming months. Questions about the house purchase can be made to members of the Acquisition Committee who have helped steer us through the purchase of the home. Those committee members are: Steve Benesh, Martha Dickie, Claude Ducloix, Randy Howry, Austin Kaplan, JoAnn Merica, Laura Merritt, Adam Schramek, Laura Sharp, Judge Tim Sulak, and Kennon Wooten.

pledge of $1 for every $2 raised, up to an additional $100,000. Judge Brandy Mueller, who sits on the board of directors for the Lola Wright Foundation, presented Austin Bar Foundation Chair Amy Welborn with the check for $100,000. This generous gift makes the Lola Wright Foundation the lead donor in the Our Home on Judges Hill capital campaign. The campaign will be launched over the next few months to cover the costs of renovations and upgrades that come with converting a house into an office space. The house underwent a major three-year renovation from 2011-14, so there are no major renovations needed at this time.

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Lola Wright Foundation board member Judge Brandy Mueller presents Austin Bar Foundation Chair Amy Welborn with a check for $100,000.

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Tips for Drafting Rule 11 Settlement Agreements

BY SARA CHURCHIN

Whether contemplated as the only agreement or an agreement to be followed by a more detailed, separate document, attention to detail and contingencies are crucial to the goal of ending litigation without spawning future disputes. Counsel should keep in mind several general objectives:

• What is the nature and timing of each party's performance under the settlement agreement?
• What specific claims against which specific parties does the agreement release?
• What claims, if any, will survive the settlement?
• What protections does the agreement afford each party against unanticipated disputes concerning the agreement itself or the party's unforeseen future expenses?
• Is the party that counsel represents getting what it wants out of this agreement?
• What concessions will a party need to make in order to get this agreement completed (and has counsel properly apprised the party of these concessions and their possible impact)?
• If a separate agreement to be signed later is contemplated, what additional provisions will be included and what will be the key terms?

I. RULE 11 AGREEMENTS

A. PREREQUISITES OF ENFORCEABILITY

Rule 11 governs only settlement in pending lawsuits—settlement of claims without a lawsuit pending is beyond Rule 11's scope. The Rule 11 settlement agreement must comply with the requirements of Texas Rule of Civil Procedure 11—just like any other agreement between counsel.

Generally, the agreement must be in writing, signed, and filed with the court or entered in open court prior to a party seeking its enforcement. An agreement can arise from a single document or a series of documents—such as letters or emails between attorneys of record—so long as the documents, when construed together, include all material terms of the agreement without resort to oral testimony. Padilla v. LaFrance, 907 S.W.2d 454, 460–61 (Tex. 1995).

II. DRAFTING TIPS

Typical Rule 11 agreements have an introduction that identifies the parties, adopts short forms, contains recitals, and defines key terms. Recitals are useful for setting out the parties' intent in plain terms—draft that portion with an eye toward possible future disputes over interpretation. Generally, a release discharges only those persons it specifically names, so full names of individuals and companies (including any “doing business as,” affiliate, or predecessor companies) should be specifically identified. It must also “mention” the specific claim to be released. Victoria Bank & Trust Co. v. Brady, 811 S.W.2d 931, 933 (Tex. 1991).

Until a court renders judgment on a Rule 11 agreement, it is merely a contract and subject to revocation of consent—even if a party has already filed the agreement with the court.

Until a court renders judgment on a Rule 11 agreement, it is merely a contract and subject to revocation of consent—even if a party has already filed the agreement with the court.

B. ENFORCEABILITY

Whether contemplated as the only agreement or an agreement to be followed by a more detailed, separate document, attention to detail and contingencies are crucial to the goal of ending litigation without spawning future disputes. Counsel should keep in mind several general objectives:

• What is the nature and timing of each party's performance under the settlement agreement?
• What specific claims against which specific parties does the agreement release?
• What claims, if any, will survive the settlement?
• What protections does the agreement afford each party against unanticipated disputes concerning the agreement itself or the party's unforeseen future expenses?

C. UNENFORCEABLE

However, courts might construe this as an unenforceable “agree-ment to agree.” Until a court renders judgment on a Rule 11 agreement, it is merely a contract and subject to revocation of consent—even if a party has already filed the agreement with the court.

Texas law recognizes that encouraging settlement and compromise of disputes is in the public interest. Even the most zealous trial lawyers warn clients that litigation is expensive, time-consuming, and emotionally taxing. Lawsuits can take years to resolve, and even hard-fought victories can ring hollow as prevailing parties face further delay while the case winds its way through an appeal. Good settlements are, often, better than bad victories.

When parties reach an agreement to settle, they often lack the luxury of spending days negotiating and drafting. In this situation, parties often use a Rule 11 agreement to seal the deal. See Tex. R. Civ. P. 11. Many such agreements have a provision contemplating a more fulsome agreement to be executed later. If the agreement does not include all key terms, however, courts might construe this as an unenforceable “agreement to agree.”

Texas law recognizes the promise of disputes settled and com-plex matters reduced to a single document or a series of documents, when construed together, include all material terms of the agreement without resort to oral testimony. Padilla v. LaFrance, 907 S.W.2d 454, 460–61 (Tex. 1995).

Although electronic signatures are legally effective to bind parties in Texas, take care when executing via email: intermediate courts have diverging opinions on what qualifies as an electronic signature, and the Texas Supreme Court has yet to resolve the conflict. See, e.g., Williamson v. Bank of N.Y. Mellon, 947 F. Supp. 2d 704, 709 (N.D. Tex. 2013) (making an “Erie guess” that the Supreme Court would consider typed names and signature blocks in emails sufficient as signatures).

III. CONCLUSION

Because the majority of lawsuits are settled, lawyers should discuss the possibility of settlement with their clients and identify key provisions early on so they are ready when the opportunity for settlement presents itself. Knowing clearly in advance what your client wants, as well as the requirements for a valid and enforceable Rule 11 can, in the end, save counsel and all parties involved from unan-ticipated consequences and expenses.

Sara Berkeley Churchin is an associate at Enoch Kever, where she focuses on civil trial and appellate litigation. Before entering private practice, Sara served as a law clerk to Justice Phil Johnson of the Supreme Court of Texas.
Retirement Reception for Judge Naranjo Raises $97,000
Proceeds Split Between Volunteer Legal Services and the Austin Bar Foundation

On Thursday, Nov. 15, 2019, friends, family, and colleagues gathered at the UT Club to celebrate the career of retiring Travis County District Judge Orlinda Naranjo of the 419th District Court. Guests were serenaded by Mariachi Estrella and enjoyed food and drinks as they honored Judge Naranjo for her long and tireless service to the citizens of Travis County.

Those in attendance saw a rendering of Judge Naranjo’s portrait, commissioned by the Austin Bar Association. The portrait was later presented to the judge and her staff and will hang permanently in the 419th District Courtroom.

Volunteer Legal Services will establish the Honorable Orlinda L. Naranjo Legal Fellowship, with Orlinda and Jim Ewbank matching the first $10,000 in donations.

Both VLS and the Austin Bar Foundation would like to thank the following sponsors for their generosity in donating more than $97,000 in Judge Naranjo’s honor.

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Judge Karen Sage, 299th District Court, presented a bouquet of flowers to Judge Naranjo on behalf of the president of the National Association of Women Judges. Photo credit: Matthew Chambers Photography.

Construction liens are now automated online in Texas. Lawyers and contractors save time and money. Fast. Simple. Affordable.

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NEW MEMBERS

The Austin Bar welcomes the following new members:

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Cameron Cox
Vernon Elkins
Theresa Gallion
Jennifer Grunewald
Lisa Hodges
David Holmes
Thomas Horton
Meagan Jones
Michael Jones
Marissa Latta
Joshua Morrow
Steven Quiring
Mary Serafine
Rob Shepherd
Claude Smith
D. Parker Willis
Gracie Woods

AWARDS

- Michael Burnett with Burnett Turner has been accepted as a Fellow into the American Academy of Matrimonial Lawyers. Burnett’s practice is limited to complex family law matters.
- Brian Cassidy has been confirmed as board chair of the Austin Chamber of Commerce for 2019. He’s the managing partner of the Austin office of Locke Lord. Cassidy has also been honored by the Real Estate Council of Austin with its Community Service Award which recognizes individuals who have made significant contributions to the local community and who serve as a role model for compassion and service.
- Craig Enoch was named chair-elect of the Austin Chamber of Commerce board. Enoch is a former Texas Supreme Court Justice and co-founder of Enoch Kerver.
- Austin managing partner and co-founder of Slack Davis Sanger, Mike Slack, was selected as a Distinguished Alumnus by the Department of Aerospace Engineering at Texas A&M University. Slack focuses on the most challenging and demanding areas of civil litigation, including aviation law and products liability cases against major corporations. He is also a licensed pilot and former NASA aerospace engineer.

NEW TO THE OFFICE

- Christopher Glenn Adkins has joined the firm of Coffin Renner as an associate, representing electric and natural gas distribution utilities.
- Mondrik & Associates announces that Nicholas J. Souza has joined the firm as an associate attorney. Souza focuses his practice on state and federal tax controversies and litigation.
- Margaret E. Tucker has joined Gray Becker. Tucker is board certified by the Texas Board of Legal Specialization. As the newest partner of Gray Becker, she will join the family law section of the firm specializing in complex divorces and family law appeals.

MOVING ON UP

- McKool Smith is pleased to announce the promotion of Kristina Baehr to Principal in their Austin office. Baehr has represented a variety of U.S. and international companies of all sizes in cases involving complex commercial and intellectual property disputes.
- Evan D. Johnson has been named partner in the firm of Coffin Renner.
Attorney referrals provide us with the best clients.
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By Andrea Marsh

Teaching Pro Bono to the Next Generation of Lawyers

The Richard and Ginni Mithoff Pro Bono Program empowers students at The University of Texas School of Law to use their developing legal knowledge and skills to address unmet legal needs.

Aspiring lawyers in Austin do not need to wait until they are licensed attorneys to start giving back to the community through the delivery of pro bono legal services.

The Richard and Ginni Mithoff Pro Bono Program empowers students at The University of Texas School of Law to use their developing legal knowledge and skills to address unmet legal needs.

“Doing pro bono work in law school helps students develop important practical skills they’ll need as lawyers. For example, many UT Law students have their first experience interviewing a client while they’re working on a pro bono project,” said Meg Clifford, a Research Attorney with the Mithoff Program. “But at a higher level, we’re also teaching students about the legal profession’s ethic of service and building the foundation for a lifetime commitment to pro bono.”

Participation in pro bono at UT Law is completely voluntary, and extremely popular. The Mithoff Program fills over 1,000 individual volunteer openings during the academic year. Approximately 40 percent of the UT Law student body volunteers on at least one pro bono project each year, and over 60 percent of the students in each class will do pro bono work before they graduate.

UT Law students are drawn to pro bono work for a variety of reasons. Participating in pro bono helps them learn about the law outside the classroom, exposes them to different practice areas, helps them develop specific legal skills, and keeps them connected to the service commitment that attracted many of them to law school.

“As a first-year student, I felt the gulf between my doctrinal classes and the practice of law,” said Kevin Robinson, UT Law ’20. “Pro bono clinics narrowed that gap by providing me with direct client experience and helping me hone skills that I will use as a lawyer.”

“Volunteering with a variety of pro bono projects provided an outlet for LL academic stress and helped me better conceptualize my career goals,” stated Natalie Neill, UT Law ’20.

Many of Mithoff Program’s offerings are evening and weekend clinics at which law students, supervised by UT Law professors and staff as well as private attorney volunteers, help people with issues including alternatives to guardianship, asylum law, driver’s license recovery, the expunction and sealing of criminal records, name and gender marker changes, and special education law. These clinics allow the Mithoff Program to offer volunteer opportunities to large numbers of students at times that are compatible with students’ class schedules.

The Mithoff Program also advertises pro bono opportunities for students who want to work directly on a case or project with a nonprofit legal organization.

Student pro bono work does more than provide a learning opportunity for those students; it also has a large community impact. UT Law students donate over 11,000 hours of pro bono service each year.

Moreover, both the clinics and direct pro bono placements allow the Mithoff Program to support organizations in Austin and elsewhere. The Mithoff Program partners with approximately 45 organizations each year, including American Gateways, the Austin Municipal Court, Disability Rights Texas, Goodwill of Central Texas, RAICES, the Texas Fair Defense Project (TFDP), Texas RioGrande Legal Aid, and the Travis County Law Library.

The driver’s license recovery clinics the Mithoff Program operates with the TFDP and other community partners provide an example of how law student pro bono work can expand the capacity of nonprofit legal organizations and benefit the larger community.

Between Nov. 2017 and Nov. 2018, UT Law students volunteered at seven clinics to assist low-income individuals with driver’s license holds related to unpaid criminal justice debt. At a typical clinic, law students meet with drivers with license holds, research their license suspensions, and explain the steps the drivers must take to recover their licenses, which often include obtaining a fee waiver or alternative payment plan in a traffic case. Students help drivers complete financial affidavits in support of requests for fee relief, and, at some clinics, attorney volunteers help drivers present the requests to on-site judges.

At a Nov. 2018 clinic held at the Doris Miller Recreation Center in East Austin, Austin Municipal Court judges waived $64,489.67 in Driver Responsibility Program surcharges and $8,363.40 in municipal court fines and fees for individuals assisted by pro bono law students.

“Many students have told me they enjoy the project because they can tell they have a tangible impact on people’s lives,” stated Neill. “It is very gratifying to see the relief on participants’ faces when they leave a clinic.”

“The leadership and hard work of the UT Law students has allowed TFDP’s driver’s license recovery work to reach hundreds more individuals than we would be able to without student participation,” said Karly Jo Dixon, UT Law ’16, staff attorney with the TFDP’s criminal justice debt initiative.
Don’t Over-Delete That  
Doing So Can Cause Miscues

BY WAYNE SCHIESS, TEXAS LAW, LEGALWRITING.NET

When I was a young lawyer, a senior attorney edited something I had written and removed the word that in several places, saying, “Whenever you can delete that, do it. It will streamline the writing.”

In the years since, I’ve heard the same advice many times: “delete extraneous thats.”

The advice isn’t wrong. It’s just that we sometimes implement this advice in dysfunctional ways: we sometimes delete that when it isn’t extraneous. Let’s look at a few examples.

1. The respondent argues the statute precludes all common-law claims.

   For me, sentence 1 causes a miscue—a momentary misunderstanding—because at first, I think the respondent is “arguing the statute.” Only as I read on do I realize that the respondent is not arguing the statute; the respondent is making an argument about what the statute does. So for me, 1a is better even though it’s one word longer:

   1a. The respondent argues that the statute precludes all common-law claims.

   But for me, sentence 2 doesn’t cause the same miscue. With the verb “say,” I somehow know that the writer doesn’t mean that the witness “said the defendant.” I know it means that the witness said that the defendant had lied. So if I wrote sentence 2a, I could justifiably leave out that (although retaining it is fine, too):

   2a. The witness said that the defendant had lied about the date.

   These two examples highlight why deleting that is tricky. It’s difficult to give strict guidelines for when deleting that is justified and when deleting that will cause a miscue.

   So I suggest that for many common verbs in legal writing, retain that. Verbs like admit, allege, conclude, find, hold, reason, show, and suggest. Here are some examples in which I think that was wrongly omitted:

3. The court concluded the claim was brought in bad faith.

   • The court concluded the claim? Oh. The court concluded that the claim was brought …
4. A jury will be able to find Mason’s errand was for the benefit of the employer.

   • A jury will be able to find Mason’s errand? Oh. A jury will be able to find that Mason’s errand was for …
5. The Reynosa decision shows the implied duty is distinct from any contractual duty.

   • The Reynosa decision shows the implied duty? Oh. The Reynosa decision shows that the implied duty is distinct …

Without that, these examples can cause a miscue for the typical reader, who’ll end up having to re-read the sentence to get the intended meaning. Sometimes, over-deleting that results not in concise, streamlined writing but in writing that frustrates.

So rather than a rule for deleting that, I would default to retaining that and remove it when editing only if you’re sure no miscue will result. Use your own editorial judgment or ask a colleague to read and react.

Do you enjoy Wayne Schiess’s columns on legal writing in Austin Lawyer?

Schiess’s columns are now compiled in a book available on Amazon.com: Legal Writing Nerd: Be One.
Laurie Ratliff, a former staff attorney with the Third Court of Appeals, is board certified in civil appellate law by the Texas Board of Legal Specialization and a partner at Ikard Ratliff PC.

The following are summaries of selected civil opinions issued by the Third Court of Appeals during November and December 2018. The summaries are an overview; please review the entire opinions. Subsequent histories are current as of January 3, 2019.

MANDAMUS: Court grants partial relief in dispute over independent medical exam.

_In re Sharaf_, No. 03-18-00671-CV (Tex. App.—Austin Nov. 5, 2018, orig. proceeding) (mem. op.). Plaintiff sued her employer for harassment and sought damages for mental anguish. Employer sought to compel plaintiff to submit to an independent mental exam by employer’s expert. Plaintiff argued that employer failed to show the information was not available through less intrusive forms of discovery. Plaintiff produced her medical records, including the raw test data used by her expert. The trial court ordered a mental status exam. The court of appeals concluded employer demonstrated good cause for the mental status exam and that the information could not be obtained by other means. However, because the trial court’s order failed to state the conditions for the examination, specifically, the type of testing to be performed, and the time limits, the court granted mandamus relief in part.

TRIAL PROCEDURE: Court reverses sanctions order against attorney.

_Sullivan v. Arguello Hope & Asocs., PLLC_, No. 03-18-00144-CV (Tex. App.—Austin Dec. 7, 2018, no pet. h.) (mem. op.). After being named incorrectly as a party in two separate lawsuits, Evans sued the law firm who had filed the lawsuits for emotional distress and defamation. Evans ultimately nonsuited her case. The trial court awarded law firm sanctions against Evans’s attorney. According to the court of appeals, Rule 13 regulates the signing and filing of groundless pleadings in bad faith or to harass; it does not regulate the pursuit of an action later determined to be groundless. Thus, whether conduct is sanctionable looks to the facts in existence when the pleading was filed. Defendants produced no evidence regarding the circumstances when the lawsuit was filed. Accordingly, the trial court abused its discretion in awarding sanctions. The court reversed and rendered.

NEGLIGENCE: Recreational-use statute requires finding of gross negligence.

_Meredith v. Chezem_, No. 03-18-00256-CV (Tex. App.—Austin Dec. 7, 2018, no pet. h.) (mem. op.). Parents of a child injured in an ATV accident sued landowners for negligence and gross negligence. The jury found negligence but not gross negligence. Landowners argued on appeal that the recreational-use statute applies only to premises defects. The court of appeals concluded the need to file an expert report. The court also rejected plaintiff’s argument that AMR waived its right to seek dismissal by obtaining her medical records during the statutory stay. According to the court, that AMR had a statutory right to obtain her medical records earlier was not inconsistent with seeking dismissal. The court affirmed.

HEALTHCARE LIABILITY: Application of res ipsa loquitur does not obviate need for expert report.

_Pruski v. American Med. Response, Inc.,_ No. 03-17-00717-CV (Tex. App.—Austin Nov. 20, 2018, no pet. h.) (mem. op.). Pruski was injured when AMR employees were pushing her on a medical gurney when it overturned. The trial court dismissed Pruski’s lawsuit for failure to timely serve an expert report. Pruski alleged that the application of res ipsa loquitur obviated the need to file an expert report. The court of appeals concluded that even if res ipsa loquitur applied, it does not excuse the statutory requirement to serve an expert report. The court also rejected Pruski’s argument that AMR waived its right to seek dismissal by obtaining her medical records during the statutory stay. According to the court, that AMR had a statutory right to obtain her medical records earlier was not inconsistent with seeking dismissal. The court affirmed.
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The cases summarized are from June 2018 and subsequent histories are current as of January 1, 2019.

CHALLENGES FOR CAUSE: Trial court did not abuse its discretion in overruling challenge for cause of juror who indicated some bias against DWI laws.

Conant v. State, No. 03-17-00066-CR (Tex. App.—Austin June 13, 2018, pet. ref’d) (mem. op., not designated for publication). Conant was charged with DWI. During voir dire, one of the prospective jurors expressed a belief that DWI laws might be “a little lax” regarding repeat offenders. Another prospective juror expressed agreement with that view. Conant attempted to have this juror removed for cause, but the trial court refused Conant’s request. The appellate court affirmed, observing that defense counsel had failed to ask the prospective juror specific questions “about her understanding of the applicable law to this case or if she could follow that law, regardless of her own personal views.” The court further observed that the prospective juror’s answers “were unclear and, at times, contradictory concerning her alleged opinions” and that defense counsel had failed to ask follow-up questions to clarify the juror’s responses. For these reasons, the appellate court was unable to conclude that the trial court had abused its discretion.

JURY UNANIMITY:
Defendant not harmed by trial court’s failure to instruct jury that it must agree unanimously on particular incident of sexual assault.

Sanchez-Saravia v. State, No. 03-17-00042-CR (Tex. App.—Austin June 20, 2018, pet. ref’d) (mem. op., not designated for publication). Sanchez-Saravia was alleged to have engaged in sexual intercourse with a 16-year-old girl on three occasions. Although there were only three dates alleged in the indictment, the victim testified that she and Sanchez-Saravia had sex “approximately two or three times per week” beginning when she was 16. Sanchez-Saravia, who testified in his defense, admitted that he had sex with the victim on one occasion, but only after she had turned 17. The jury found Sanchez-Saravia guilty of having sex with the victim on one of the dates alleged in the indictment, but not on the other two dates. On appeal, Sanchez-Saravia argued that the court’s charge failed to instruct the jury that it must agree unanimously on a single incident of sexual assault. The appellate court agreed but was unable to find harm. The court observed that the State elicited testimony tending to show that the victim “remembered certain details of three occasions in particular, each corresponding to the dates alleged in the indictment.” Additionally, the contested issue in the case was not the specific dates of the offense, but whether Sanchez-Saravia had engaged in sexual intercourse with the victim “on any date at all prior to her seventeenth birthday.” For these and other reasons, the court concluded that Sanchez-Saravia had not been harmed by the charge error.

EXTRANEOUS OFFENSES:
Defendant’s decades-old arrest for family violence admissible in defendant’s trial for assault, family violence.

Tran v. State, No. 03-17-00155-CR (Tex. App.—Austin June 26, 2018, pet. ref’d) (mem. op., not designated for publication). Tran was charged with strangling his wife. At trial, the State offered into evidence testimony tending to show that Tran had been arrested in 1994 for hitting his wife. The State argued that the evidence was admissible under Article 38.371 of the Code of Criminal Procedure, which provides that in an offense for assault, family violence, the State may offer “testimony or evidence regarding the nature of the relationship between the actor and the alleged victim.” The district court admitted the evidence, even though the offense had been committed before the effective date of Article 38.371. The appellate court affirmed, concluding that the evidence was nonetheless admissible under Rule 404(b) of the Texas Rules of Evidence. According to the court, the probative value of the evidence was “not reduced to zero by the passage of time,” and the evidence was admissible to show the nature of Tran’s relationship with the victim, to rebut a defensive theory of self-defense, and to explain the failure of the victim to testify at trial.
SUZANNE COVINGTON
Senior District Judge

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FEDERAL CIVIL COURT UPDATE

The following are summaries of selected civil opinions issued from the U.S. Court Of Appeals for the Fifth Circuit. The summaries are intended as an overview; counsel are cautioned to review the complete opinions.

CIVIL PROCEDURE: Under a fee-shifting statute, a court should consider the prevailing party’s rejection of a Rule 68 offer that was more favorable than the judgment obtained. Gurule v. Land Guardian, Inc., No. 17-20710 (5th Cir. Dec. 27, 2018). Gurule, one of four Fair Labor Standards Act (FLSA) plaintiffs, rejected a Rule 68 offer of judgment and proceeded to trial, where she prevailed on her FLSA claim and was awarded damages and attorneys’ fees. The damages she won at trial, however, were lower than the rejected Rule 68 offer. Thus, under Rule 68, Gurule was required to pay Defendants’ post-offer costs. On appeal, the Fifth Circuit decided what effect, if any, the rejection of the more favorable Rule 68 offer of judgment should have on Gurule’s fee award.

FLSA’s fee-shifting provision defines “attorney’s fees” separately from “costs.” 29 U.S.C. § 216(b). Thus, Rule 68 does not preclude a fee award in FLSA cases, despite the prevailing plaintiff’s rejection of a better offer. In looking at the attorney’s fee award, the district court noted “the gap between Gurule’s expectation and reality” shown by her attorney’s response to the offers, and for that reason criticized Gurule’s counsel for failing to exercise good judgment in obtaining successful results. The court factored the rejection of the better offers into a 60 percent downward adjustment of the lodestar.

The Fifth Circuit joined other circuits that have held the rejected offer should be considered in assessing the reasonableness of an attorney’s fees award. The “most critical factor” in assessing a reasonable fee is a prevailing party’s “degree of success.” Hensley v. Eckerhart, 461 U.S. 424, 436 (1983). In measuring that success, a court should ask whether the party would have been more successful had his attorney accepted a Rule 68 offer instead of pursuing a trial. The court need not close its eyes to the reality that a plaintiff’s post-offer legal work produced a net loss. Applying this principle, the Fifth Circuit found the district court appropriately considered Gurule’s rejection of the more favorable Rule 68 offer in reducing, but not eliminating, the fees award.

ATTORNEYS’ FEES/CIVIL PROCEDURE: The dismissal of a case without prejudice by plaintiff does not create a “prevailing party” for purposes of recovery of attorney’s fees under the Defend Trade Secrets Act. Dunster Live LLC v. Lonestar Logos Management Co., LLC, No. 17-50873 (5th Cir. Nov. 13, 2018). Plaintiff and Defendants used to be members of the same LLC. Plaintiff sued in federal court alleging violations of the Defend Trade Secrets Act (DTSA), along with state law claims. Plaintiff also sought a preliminary injunction, which was denied. Plaintiff subsequently sought permission to dismiss the case without prejudice. Fed. R. Civ. P. 41(a) (2) (requiring court approval for dismissal once the opposing party has filed an answer or dispositive motion). Defendants opposed the motion to dismiss, claiming that Plaintiff was engaging in “bad faith” by seeking to avoid an adverse ruling on the merits and liability for its attorney’s fees; however, the motion to dismiss was granted.

After dismissal, Defendants sought recovery of $600,000 in attorney’s fees. The district court denied the fee request, concluding that a dismissal without prejudice does not make a defendant a prevailing party because a “plaintiff is free to resurrect its claims against the defendant and may prevail at a later date.”

On appeal, Defendants argued that this rule allows plaintiffs to evade paying fees by strategically seeking a dismissal without prejudice once it determines the lawsuit is “doomed.” The Fifth Circuit affirmed the denial of the fee request, noting that this argument ignores the court-approval requirement for dismissals under Rule 41. Further, Rule 11 provides a check on the behavior Defendants are concerned about, and sanctions can be imposed against a party litigating in bad faith, regardless of prevailing-party status. A dismissal without prejudice does not make any party a prevailing one because it does not result in a “material alteration of the legal relationship of the parties.”

JURISDICTION/CIVIL PROCEDURE: To establish improper joinder for remand to state court, it is the movant’s burden to negate the possibility of recovery against a nondiverse party. Cumpian v. Alcoa World Alumina, LLC, No. 17-40825 (5th Cir. Dec. 6, 2018). Plaintiff, Oscar Cumpian, a Texas resident, brought suit for negligence in Texas state court against three defendants, including Alcoa World Alumina, LLC, which undisputedly had all out-of-state members. The other defendants, Stephen Aldrado and PMIC, were alleged to be Texas citizens. Alcoa removed the case to federal court, asserting diversity jurisdiction under 28 U.S.C. § 1332(a), claiming that Alvarado and PMIC had been improperly joined. Cumpian filed a motion for remand, arguing that Alcoa failed to establish citizenship and that PMIC had not been improperly joined. The district court denied the motion, finding there was improper joinder because Cumpian had articulated no facts as to PMIC or Alvarado. The district court therefore dismissed them for “failure to state a claim” and entered a judgment that Cumpian take nothing. Cumpian filed a notice of appeal challenging the district court’s refusal to remand and the granting of summary judgment to Alcoa.

Joinder of a party solely for the purpose of blocking jurisdiction based on diversity may be established by showing: (1) actual fraud in the pleadings; or (2) the “inability of the plaintiff to establish a cause of action against the nondiverse party in state court.” To prevail on its improper-joinder claim, a defendant must put forward evidence that would negate the possibility of liability on the part of the nondiverse defendant. At this stage, the court may conduct a summary inquiry to determine if there are discrete and undisputed facts that would preclude plaintiff’s recovery against the in-state defendant. Alcoa failed to meet its burden to negate the possibility of recovery. Judgment of the district court was vacated, and the case was remanded to district court to remand to Texas state court.
Baby’s First Step: Inching Towards Criminal Justice Reform

BY DAVID PETERSON

On Dec. 21, 2018, President Trump signed into law the First Step Act. This column addresses the major points of what has been called on one hand both “modest” and “comprehensive,” but also a precarious step toward increased “e-carceration” and a “step in the wrong direction.” I’ll put my own opinion out there, but then move on to the substance: it’s a positive first step, but also a baby step towards true criminal justice reform.

The First Step Act reduces some mandatory minimums, but only the most draconian ones. For example, the law reduced the “third strike” for drug offenses from mandatory life without parole to mandatory 25 years. The “second strike” went from 20 to 15 years. These are good changes, but do nothing to reduce the draconian five- and 10-year mandatory sentences against people (including “first-timers”) caught with certain quantities of drugs.

The new law will have a real and positive impact for my clients in two areas. First, the law reduces the grave 25-year mandatory “stacked” sentence for each possession of a firearm, when someone participates in multiple robberies. But it only does this by clarifying that the Supreme Court interpreted the existing statute wrongly in Deal v. United States, 508 U.S. 129 (1993). Deal got 102 years for a string of armed bank robberies, although he didn’t hurt anyone or discharge a firearm.

The First Step Act also corrects an error of interpretation by the Bureau of Prisons (again, one that was upheld by the Supreme Court) that robbed my clients of seven of their possible 54 days a year of “good-time credit” through an outrageous interpretation of math. See Barber v. Thomas, 560 U.S. 474 (2010). The law does have other good and important reforms: it fixes the broken “compassionate release” process for terminally ill people serving out their last days behind bars, it requires placement within 500 driving miles of prisoners’ families, and it dramatically increases home confinement for a small subset of currently imprisoned people who are determined to be a low-risk for reoffending.

The “e-carceration” that some critics complain of is related to this last part of the bill—and it’s a big part. According to its critics, home confinement following a “risk-assessment” will almost certainly entrench the racial disparities found in many “risk-assessment tools” used in the criminal justice system. Also, some feel that it doesn’t reduce incarceration, it just allows prisoners to be monitored but not truly free (often using expensive electronic monitoring equipment provided by for-profit companies). While they will be allowed to work and reside in the community, they will be under the close supervision of a probation officer and can end up behind bars for minor problems, including positive drug tests. While many of my clients will or would gladly accept this trade, it does come with risks, costs, and profits for “correctional” corporations.

While a baby’s first step is often followed by another and another, some of us see the U.S. prison system as a behemoth, rather than a baby. A first step to make a behemoth smaller is important, but it should be followed by others.

David Peterson is an assistant federal public defender for the Western District of Texas. Any views expressed are his views only and not that of the Office of the Federal Public Defender.

Footnotes
3. For a fun read attempting to explain the outrageous bureaucratic thinking that led to this error, read https://tinyurl.com/y78lsldo.
Update on Local Inns of Court

ROBERT W. CALVERT
AMERICAN INN OF COURT
The Calvert Inn of Court recently won two national program awards. The following programs were awarded Outstanding Program Awards:

• A DACA Christmas Carol: This presentation was led by Steven Garrett and included Danielle Ahlrich, Kelly J. Capps, Prof. Mary R. Crouter, Craig T. Enoch, Lessie Gilstrap, Michael J. Golden, Scan Homrig, Michael Kabat, Xavier G. Medina, Laura M. Merritt, Jordan K. Mullins, Chris Sapstead, John P. Vacalis, Kevin J. Weber and Raymond E. White.

• Biased? Me? How Biology and Psychology Affect our Opinions and Actions-And How to Recognize and Improve our Interpersonal Skills: This presentation was led by Nikki Maples and included Catherine Baron, Daniel W. Betts, Kelly Canavan, Claude E. Ducloix, Kate Goodrich, Julian Grant, Rob Hargrove, Kenton D. Johnson, Kurt Kuhn, Paula Pierce, Barham A. Richard, Jeannie Marie Ricketts, Ryan Shelton, Lena Silva, D. Todd Smith, Ryan Squires, and Hon. Timothy M. Sulak.

These presentations were picked among hundreds of presentations from across the country by the American Inns of Court organization.

HONORABLE LEE YEAKEL
INTELLECTUAL PROPERTY
AMERICAN INN OF COURT
On Dec. 1, 2018, Honorable Lee Yeakel IP Inn of Court Pro Bono Committee member Cat Garza organized a clinic at American Gateways where a group of volunteers worked with Deferred Action for Childhood Arrivals (DACA) applicants and helped about a dozen young people prepare DACA applications and work authorizations. The client stories and the application process complexity were very eye-opening to most in attendance.

Thanks to American Gateways staff Edna Yang, Rebecca Lightsey, and Felicia Simpson for organizing and supporting the clinic.

On Dec. 19, 2018, the Honorable Lee Yeakel IP Inn of Court held its third CLE-approved meeting year at The Headliner’s Club. The program for the meeting hosted an interview with Alan Albright, a newly appointed United States District Judge of the United States District Court for the Western District of Texas. Members interviewed Judge Albright about his career trajectory, the procedures he is implementing in his courtroom, his goals for courtroom conduct, and how he plans to handle Markman cases. The program concluded with a Q&A session.

TOP: (from left) Edna Yang, Michele Connors, Rebecca Lightsey, Tamsen Barrett, and Felicia Simpson.
BOTTOM: (from left) Alex Shahrestani, Kevin Burgess, David O’Brien, John Williams, Chad Ennis, Bill Barber, Chris Ryan, Bill Raman
Finding answers to questions about the law or a legal situation can be difficult for the public, but on every first Tuesday of the month, obtaining good, simple legal advice is easy. The Lawyer Referral Service of Central Texas (LRS) hosts LegalLine, an event staffed by attorney volunteers who answer legal questions and give brief legal advice for free via phone. Questions concerning many areas of the law including family law, criminal matters, traffic problems, consumer issues, landlord/tenant issues, employment law, and personal injury issues are fielded.

LegalLine is supported by the following local restaurants who donate a light dinner for the attorney volunteers: Rudy’s BBQ, Taco Deli, Austin’s Pizza, Thundercloud Subs, Con Madre Kitchen, Tyson’s Tacos, and East Side Pies.

LegalLine would not be possible without the dedicated attorney volunteers who donate their time to the program. LRS appreciates each attorney who gives of their time and is grateful to them for being a part of their community service. LRS would like to extend a special thank you to attorneys Andrew Bernick and Jeff Villarreal for volunteering more than five times in 2018.

Interested in joining the LRS? Email Annie Melendez, LRS Executive Director, at Annie@AustinLRS.org.

Through volunteering at LegalLine, I have met and worked with lawyers who handle all types of cases. We are united in a common purpose of helping our community, by listening to their needs, and finding solutions. I enjoy the time I get to spend learning about other people’s passions for the law and the camaraderie to be part of a team that cares about people both in and out of the rooms of LRS.

—Jeff Villarreal, Attorney at Law

Thank You LegalLine Volunteers and Sponsors

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Tailgate for a Cause—a Fun Time for All

The Austin Young Lawyers Association hosted a fundraiser tailgate for the third year in a row prior to the University of Texas vs. West Virginia football game on Saturday, Nov. 3, 2018. Fans of both teams joined in the fun. Admission for the tailgate was a suggested $20 donation per person. All the money raised was donated to Reindeer Games. Thank you to our tailgate committee, and special thanks to Franklin Hopkins for smoking the delicious briskets and to his friends for letting us use their tailgate space. This event would not have been possible without our generous sponsors.

AYLA Gives Back
Community Service Days Support the Central Texas Food Bank and Austin Habitat for Humanity

On Oct. 30, 2018, AYLA sent a team of volunteers to the Central Texas Food Bank as part of the Austin Beer Garden Brewing Co.’s “Volunteer Beer Night.” Along with other volunteers, AYLA members prepared 1,920 meals in just one night for struggling members of our community. On Nov. 27, AYLA members returned to the Central Texas Food Bank to prepare another 960 meals. Then, on Dec. 1, AYLA closed out the volunteering year by helping build a house for a single mother and her family through Austin Habitat for Humanity. These volunteer nights are part of AYLA’s Community Service Days, a monthly campaign to volunteer for charities across the Austin area. Upcoming volunteer events, which are open to all AYLA and Austin Bar Association members as well as their friends and families, include events helping the Central Texas Food Bank, Austin Parks Foundation, the Green Corn Project, and other Austin-area non-profit groups.

These volunteer nights are part of AYLA’s Community Service Days, a monthly campaign to volunteer for charities across the Austin area.

THURSDAY, FEB. 21
Diversity Bar Mixer
5:30 – 8 p.m.
Sellers Underground, 213 W. 4th St.

WEDNESDAY, MARCH 27
Runway for Justice
800 Congress Ave.
6 – 9 p.m.
Tickets on sale soon

Back for the fifth year in a row, AYLA will host Runway for Justice, a fashion show that brings together Austin’s legal community for a night of fun and fashion. This year’s show will feature male and female attorney models strutting their stuff to highlight local designers, jewelry, and accessories. Attendees will enjoy complimentary drinks and hors d’oeuvres. All proceeds raised will benefit the AYLA Foundation’s projects. To sponsor or get involved, please contact Debbie Kelly at debbie@austinbar.org.
Reindeer Games a Success

Reindeer Games is a holiday event for underprivileged families in the Austin community. On Sunday, Dec. 9, 2018, AYLA partnered with the YMCA to provide toys for 295 children. Parents who attended were able to shop for Christmas presents for their children. The children in attendance enjoyed a magic show, photos with Santa, games, and holiday crafts. Thank you to all of our volunteers who made this event possible, and thank you to everyone who purchased gifts from our wish list.

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Thanks to all of the volunteers who made Reindeer Games so merry!

Interested in Serving on the AYLA Board?

AYLA is seeking attorneys interested in serving on its board of directors for the 2019-2020 Bar year. Serving on the AYLA board is not only a great way to give back, it is the best possible way to gain the most from being involved in the organization. To be eligible for a board position, a candidate must be a current AYLA member and be 40 years of age or younger as of July 1, 2019. To be placed on the ballot, submit a nomination form signed by 10 current AYLA members to Debbie Kelly at debbie@austinbar.org. Nomination forms, deadlines, and more information can be found at ayla.org.

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Navigating the probate process can seem like a daunting task for any attorney. However, knowing the options that are available when a loved one passes away can help you determine where in the world to begin. When trying to determine which probate option is best for a given scenario, the first question to ask is whether the decedent passed away with or without a will. This article will only address the three options available to families of people who pass away intestate (that is, without a will).

**AFFIDAVITS OF HEIRSHIP**
The first, easiest, and most cost-efficient option to transfer property to a decedent’s heirs is an affidavit of heirship. The affidavits are signed by at least two disinterested people and filed in the real property records of the county in which the real property is located. If a decedent’s heirs are anticipating they will sell the property in the near future, it is a great idea to consult with the title company that will be working on the transaction. Often times, title companies prefer that at least three disinterested people sign the affidavits and that the affidavits be on file (in the real property records) for several years before they will give the thumbs up. Lastly, affidavits of heirship are typically only used to transfer a decedent’s real property, so this is not a viable option for scenarios in which a decedent had bank accounts, vehicles, etc. The affidavit of heirship form is found under Section 203.002 of the Texas Estates Code.

**SMALL ESTATE AFFIDAVIT**
A small estate affidavit is another cost-efficient option for intestate estates. However, it is used even more infrequently than affidavits of heirship because the scenarios in which it is appropriate are scarce. Generally speaking, a small estate affidavit may only be used when a decedent’s assets total less than $75,000 (not including homestead and exempt property) and the estate’s debts are less than its assets (not including debts secured by homestead and exempt property). Several courts take the position that only homestead property can be transferred via a small estate affidavit and that it must be inherited by person(s) who were “homesteading” with the decedent at the time the decedent passed away. In addition, some courts will not approve a small estate affidavit if the decedent left any minor heirs.

**DETERMINATION OF HEIRSHIP**
The final option is a determination of heirship. A determination of heirship can be (but need not be) accompanied by an application for an administration—typically an administration is necessary though to gather assets and pay debts. Upon the filing of a determination of heirship application, the Court will appoint an attorney ad litem to represent the interests of the decedent’s heirs whose names or locations are unknown and known heirs who are incapacitated persons. The attorney ad litem will do some research, conduct a little due diligence, and verify the decedent’s family and marital history. At the probate prove-up hearing, most courts will require the testimony of two disinterested witnesses who can attest to the decedent’s family and marital history. Essentially, the court wants to ensure that the decedent’s heirs and their true interest in the decedent’s estate are correctly listed. It’s important to note that some courts will not grant an independent administration (as opposed to a dependent administration) of an intestate estate if there are minor heirs and oftentimes will not grant an administration if the application is filed more than four years after the decedent died.

Passing away intestate can cause a host of unintended consequences for loved ones. Mischaracterizing property when someone leaves a surviving spouse, community property issues, and leaving behind minor heirs can drastically complicate the probate process and will add frustration to an already grieving family. I tell new estate planning clients that writing a will is one of the greatest gifts they will ever give their children and/or heirs.
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