Austin Bar Association Adopts New LGBT Law Section

At its February board meeting, the Austin Bar Association’s Board of Directors voted unanimously to accept the request of the Austin LGBT Bar Association to become the newest section of the Austin Bar.

The Austin LGBT Bar will no longer exist as an independent stand-alone bar association, and instead will now operate as a substantive law section of the Austin Bar. Individuals who want to become an LGBT Law Section member can now elect to join the LGBT Law Section through the Austin Bar. Current members of the LGBT Bar who are not yet members of the Austin Bar must join the Austin Bar and then become a member of the LGBT Law Section. LGBT Law Section membership is not limited to LGBT attorneys, but is open to all members of the Austin Bar who have an interest in LGBT legal issues and who seek to improve their representation of LGBT clients.

LGBT Law Section membership is not limited to LGBT attorneys, but is open to all members of the Austin Bar who have an interest in LGBT legal issues and who seek to improve their representation of LGBT clients.

The Austin LGBT Bar has long been recognized as an extraordinarily active and involved minority bar organization. Since its inception, it has organized and sponsored more than 50 CLE programs focused on legal issues unique to Austin’s LGBT community. These programs have focused on issues as diverse as same-sex marriage, same-sex adoption, the retroactivity of common-law marriage for same-sex couples, immigration and asylum issues, transgender name and gender-marker workshops, the impact of religious exemption laws, gay-panic defense controversies in Austin's criminal courts, and a multitude of other legal issues that Austin attorneys representing LGBT clients need to understand. According to Collins, the Austin LGBT Bar has hosted numerous social gatherings and networking events, helped organize the annual Austin Law Firm Diversity Report Card, organized law-student mentoring programs and workshops, organized advocacy forums, and assisted in revising Travis County Court forms after the Obergefell decision. It has organized judicial training programs to assist the local judiciary with the processes for entering transgender name and gender-marker orders and helped organize a keynote presentation at the Austin Bar’s Bench-Bar Conference to help educate the broader bar about LGBT legal issues.

However, along with its tremendous growth and activity has come the practical problems associated with running a busy organization with only part-time, purely volunteer staff. By becoming a section of the Austin Bar, the LGBT Bar will be able to focus on its programming while the Austin Bar staff handles its...
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APRIL 2019 | VOLUME 28, NUMBER 3

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ONLINE  austinbar.org

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Discount Offered to Austin Bar Members for COTA Bike Nights

EVENTS & MORE
MAY 24 Members Only 4th Friday CLE
Topic: Dos and Don’ts of Discovery in Texas Civil Proceedings
Speakers: Kennon Wooten and Bob Wise

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Austin Young Lawyers Association

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affecting Austin attorneys, and other issues impacting
lawyers and the legal professionals. It also includes in-
formation on decisions from the U.S. Western District
Federal Court and Third Court of Appeals, CLE opportu-
nities, members’ and committees’ accomplishments, and
various community and association activities.

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State Bar to Vigorously Defend Lawsuit

FILED BY TONY K. MCDONALD, JOSHUA B. HAMMER,
AND MARK S. PULLIAM

On March 6, 2019, a lawsuit was filed in the Western
District of Texas claiming that under Janus v. AFSCME, 138
S. Ct. 2448 (2018), it is unconstitutional for an attorney to be compelled to be a
member of the State Bar of Texas in order to practice law.

The State Bar of Texas is confident it is fulfilling all statutory responsibilities as the administrative arm of the Texas Supreme Court, consistent with the Court’s authority to regulate the legal profession. The pending legal action will be addressed accordingly.

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Leaving a Legacy
In 100 Years, Who Will Know You Were Here?

We’re living in an era of immediate and endless data. We upgrade our phones and computers to increase the volume and speed with which we can receive it. Our own work becomes a part of it.

In this era of constant streaming data, what will outlast us? What will outlive us? What will be the evidence of our impact?

In 126 years, the Austin Bar Association has never had a permanent home. With our move to Hilgers House, we will be putting down roots in the historic Judges Hill neighborhood.

Generations of Austin attorneys will pass through the doors of Hilgers House. The home will host meetings and social gatherings and will become a tangible symbol of the organization and the legal community.

Imagine your name in this house, as part of your legacy. A $5,000 gift to the Hilgers House campaign gets your name on the Leadership Wall, which will be located in the historic home’s main foyer. Gifts can be paid over a five-year period.

Gifts between $1,000 and $4,999 will be recognized in the Hilgers House Conference Room, where meetings and CLEs will be held.

We have a unique opportunity to leave our legacy—to create a lasting record of our membership in Austin’s legal community—for our families, our colleagues, and ourselves.

To add your name to the Leadership Wall, visit www.ourhomeonjudgeshill.com or contact DeLaine Ward at Delaine@austinbar.org.

All gifts and pledges made before November 30 will be matched, $1 for $2, by the Lola Wright Foundation.

Hilgers House Foyer—Will your name be on the Leadership Wall? Be a part of history with a gift to the Hilgers House campaign.

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Your Austin Bar Association board of directors just took two major steps towards becoming a more inclusive association. First, our board voted unanimously with the full support of the LGBT Bar Association to make that group our newest section. The LGBT Law Section of the Austin Bar is open for membership. Second, the board voted to extend temporary membership status to paralegals, pending a full vote of the Austin Bar later this month to amend our bylaws to extend membership to this important group of legal professionals.

With these two historic votes, our association takes a step towards becoming a bigger tent that values different points of view and ideologies. So why did the LGBT Bar and paralegals want to join the Austin Bar?

First and foremost, it was to be a part of a broader legal community that can provide enhanced programming, educational opportunities, and professional camaraderie. But it was also to obtain the valuable assistance of the Austin Bar staff. Attorneys and legal professionals have full-time jobs. Running a law-related group means somebody has to bear the administrative burden of tasks like collecting and tracking membership information, advertising events, contracting with and paying vendors, keeping track of email addresses, creating newsletters, and updating websites and calendars. This list goes on and on. That’s why the Austin Bar has a top-notch professional staff led by DeLaine Ward, our executive director for more than 35 years. By joining the Austin Bar, members and leaders of law-related groups can better focus on their programming and missions.

With respect to paralegals, the board unanimously agreed that our association should have a place for this important group of legal professionals. Many of us are litigators, and we know the value the paralegal profession brings to our practices. We only benefit from the Austin Bar having programming that advances and enriches the continuing education of paralegals. While we have been able to extend honorary membership to paralegals this year, in April we will submit a bylaw amendment to create a category of membership to include paralegals.

And the LGBT Law Section is not just for attorneys who identify as LGBT or have a legal practice that includes LGBT legal issues. It is a section for all attorneys who are allies of the LGBT movement and the culture of inclusion and equality that it represents. So I hope you will consider becoming a member of this important new section. And on April 13, I hope you will attend its “Composing the Future Gala” at Symphony Square. This event raises money for scholarships for Texas law students who are involved with LGBT legal issues.

This is an exciting time to be an Austin Bar member. We are on the verge of acquiring a historic property that will become our new, iconic home on Judges Hill. We are expanding and diversifying our membership. And we are renewing our commitment to pro bono and the many pro bono community providers who provide access to justice initiatives.

Please join me in welcoming our new LGBT Law Section and our paralegal members. As I wrote last year, together, we can pursue the common good, advance our profession, and improve our community. Together, we can step up and step out.

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APPLE LEASING
2019 Bench Bar Conference and Annual Meeting
Building a Better Future—Connecting the Bench and the Bar

Join the Austin Bar Association and the Austin Young Lawyers Foundation for the 29th annual Bench Bar Conference and Annual Meeting on May 3, 2019 at the Austin Country Club. The day-long CLE event provides attorneys and judges the opportunity to interact outside the courtroom in a casual, discussion-oriented environment. Attendees will obtain 7.25 hours of CLE credit while building congeniality between the bench and the bar.

Tickets are $300 for members and $400 for non-members. Register online at austinbar.org by April 22. Sponsorships are available, and sponsorship information can be found at austinbar.org. Partial scholarships are available. Requests for scholarships, as well as cancellations or refunds, must be received by April 22. The committee is interested in awarding scholarships to newly licensed lawyers, solo practitioners, and government/agency lawyers who might not otherwise be able to attend. Email Debbie Kelly at debbie@austinbar.org for an application. Due to limited space, only judges, lawyers, and speakers may register. Early registration is encouraged.

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### 2019 BENCH BAR CONFERENCE SCHEDULE

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<th>Session</th>
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<td>8 – 9 a.m.</td>
<td>Registration/VENDOR FAIR</td>
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<tr>
<td>9 – 9:15 a.m.</td>
<td>Welcome and Introductions</td>
</tr>
<tr>
<td>9:15 – 10 a.m.</td>
<td>Everything You’ve Ever Wanted to Know about Practicing in Travis County: The rules and unwritten etiquette on how to navigate the system successfully. Panel: Warren Vavra, Judge Lora Livingston, Judge Todd Wong; Moderator: Sinead O’Carroll</td>
</tr>
<tr>
<td>10 – 10:30 a.m.</td>
<td>Judicial B-I-N-G-O: Chat with judges, fill out a bingo card, and enter to win prizes.</td>
</tr>
<tr>
<td>10:30 – 11:15 a.m.</td>
<td>Practice Local: Understanding Travis County’s local rules, standing orders, uncontested docket, and new submission docket—and suggestions for improvement. Panel: Judge Scott Jenkins, Judge Darlene Byrne, Judge Amy Clark Meachum, Judge Jan Soifer; Moderator: David King</td>
</tr>
<tr>
<td>11:15 a.m. – 12 p.m.</td>
<td>Ask the Staff Attorneys: A discussion with staff attorneys from the Travis County District Courts, U.S. District Courts for the Western District of Texas and the Third Court of Appeals. Panel: Jenny Brunner, Kathryn Bogges, Megan Johnson, and Brent McCabe; Moderator: Andrew Williams</td>
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<tr>
<td>12 – 12:30 p.m.</td>
<td>VENDOR FAIR</td>
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<tr>
<td>12:30 – 1:30 p.m.</td>
<td>Law and Order / Lunch: Judge Julie Kocurek will discuss details of the crime, investigation, and trial; passage of the Judge Julie Kocurek Judicial and Courthouse Security Act of 2017; and the future of Judicial Safety. Speakers: Judge Julie Kocurek; Moderator: Amy Meredith</td>
</tr>
<tr>
<td>1:30 – 2:30 p.m.</td>
<td>A Peek Behind the Curtain: Judges share their perspectives on discovery disputes, civility amongst members of the bar, and conversations with jurors, court staff, and other judges. Panel: Judge Robert Pitman, Judge Cliff Brown, Judge Tim Sulak, and Judge Karin Crump; Moderator: Scott Brutocao</td>
</tr>
<tr>
<td>2:30 – 3 p.m.</td>
<td>Judicial B-I-N-G-O: Second chance to chat with judges, fill out a bingo card, and enter to win prizes.</td>
</tr>
<tr>
<td>3 – 4 p.m.</td>
<td>May It Please the Court: Oral and written advocacy tips from the bench. Panel: Chief Justice Jeff Rose, Judge Lee Yeakel, Judge Karen Sage, Judge Dustin Hoxell; Moderator: Stefanie Scott Shah</td>
</tr>
<tr>
<td>4 – 5:15 p.m.</td>
<td>Happy Hour and Update on the New Travis County Courthouse: Enjoy an open bar during an interactive discussion on how the design and construction of the new civil and family courthouse will change practice in Travis County. Panel: Judge Lora Livingston, Judge Eric Shepard, Judge Andy Hathcock; Moderator: Jessica Mangrum</td>
</tr>
</tbody>
</table>
Austin Bar Welcomes LGBT Law Section

continued from cover

dues collection, membership lists, and other organizational processes.

“I believe both the Austin Bar and the former LGBT Bar will benefit greatly from this merger,” said Austin Bar Executive Director, DeLaine Ward. “By becoming a section of the Austin Bar, the members of the LGBT Bar will be able to spend their time and energy on their excellent programming, CLEs, and community service projects while enjoying the full administrative support and member benefits provided by the Austin Bar. As a result, the Austin Bar becomes a more diverse and inclusive organization. We couldn’t be happier to join forces with this dynamic group of attorneys.”

The LGBT Law Section’s biggest project is its annual Sculpting the Future Scholarship Gala. The Gala recognizes local lawyers, judges, and politicians who have made significant contributions to the LGBT legal community and raises significant funds for LGBT law school scholarships that are presented at the State Bar’s Annual Meeting. This year’s event will be held on April 13, 2019 at Symphony Square. More information, including sponsorship and ticket opportunities can be found at austinbar.org.

Seeking Nominations for Regina Rogoff, Professionalism Awards

The Regina Rogoff Award honors an attorney who has demonstrated outstanding service in the public/non-profit sector. This annual award serves as a lasting tribute to the career achievements of Regina Rogoff, Executive Director of Legal Aid of Central Texas. Rogoff was with legal services in Texas since she started at LACT as a Vista Volunteer in 1973.

Presented jointly by the Austin Bar Association and the Texas Center for Legal Ethics and Professionalism, the Professionalism Award honors a lawyer who best exemplifies, by conduct and character, truly professional traits that others in the bar seek to emulate, and who all in the bar admire. Those selected for the award will truly be “role models” for the bar, particularly younger or less experienced lawyers.

Send nominations for both awards to DeLaine Ward, at delaine@austinbar.org, by April 19, 2019. The awards will be presented at the Austin Bar board reception on May 29.

Family Law Specialist

Tim Whitten has practiced in family law since 1992. He has been certified as a Family Law Specialist by the Texas Board of Legal Specialization.

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NEW MEMBERS

The Austin Bar welcomes the following new members:

Rishabh Agny
Michelle Fontenot
Dennis Garbe
Stephanie Green
Wesley Lunkley
Ryan McKee
Kelsey Osborne

NEW TO THE OFFICE

Elizabeth “Heidi” G. Bloch has joined the Austin office of Greenberg Traurig as a shareholder. Bloch will focus her practice on appellate matters in the areas of general commercial litigation, construction litigation, and energy and natural resources disputes, in addition to alternative dispute resolution.

Scott Field, a former Texas appeals court judge in Austin, has joined Butler Snow’s Austin office, adding to its commercial litigation and appellate practices.

Allensworth & Porter welcomes construction lawyer Steven Hardt to the firm. Hardt advises public and private owners, architects, engineers, and contractors on the drafting and negotiation of complex commercial construction and infrastructure contracts.

Fred Sultan is now working in-house at the Lower Colorado River Authority. Sultan received the David H. Walter Community Excellence Award at the Austin Bar Foundation Gala in January.

MOVING ON UP

Boulette Golden & Marin is proud to announce Carolyn Gutierrez Bartelli has been named a partner in the firm. Bartelli leads the firm’s corporate immigration practice group and represents U.S. and international companies in the technology, healthcare, international trade, and professional services sectors with respect to all immigration-related matters.

After 20 years with the firm, Munsch Hardt is proud to announce that bankruptcy, restructuring, and insolvency attorney Jay H. Ong has been named managing shareholder of the firm’s Austin office. In this new role, Ong will oversee 17 Austin-based attorneys and staff members, as well as serving on the firm’s operations committee.

Jackson Walker is pleased to announce the election of nine attorneys to the firm’s partnership in Austin. They are Collin Baker, Tyler Davey, William Dillard, Noah Galton, Andee Hartig, Kati Orso, David Snyder, Scott Weatherford, and Jennifer Wertz.
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It's our approach to family law issues that can be overwhelming.

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Austin Lawyers’ Auxiliary Wins National Awards

The Austin Lawyers’ Auxiliary (ALA) walked away from the American Bar Association’s mid-year meeting in Las Vegas with two national awards from the American Lawyers Alliance. The first went to ALA member Noel Roberts, who received the National Outstanding Individual Volunteer of the Year recognition for her tireless efforts in streamlining communication on behalf of the American Lawyers Alliance, the Texas Lawyers Auxiliary, and the ALA.

Additionally, the ALA received the American Lawyers Alliance Auxiliary Support Award for its support of Austin Adoption Day in conjunction with the Austin Bar Foundation. The coveted national Law Auxiliary Support Award carries with it a $600 stipend to support local law-related projects. The ALA received the distinction for its work on Austin Adoption Day held at the Gardner Betts Juvenile Justice Center.

The event, held annually as part of National Adoption Month, honors the foster and adoptive families who provide safe and stable homes for children who have suffered neglect and abuse. This special day also recognizes attorneys, CASA, case workers, judges, and community volunteers who have worked throughout the year on behalf of these children. Volunteers from the ALA decorate the Juvenile Justice Center with balloons, stuffed toys, and streamers, providing the festive atmosphere to make the day a joyous and memorable one for the new families.

Such volunteer work is not new to the ALA. Established in 1950 as The Austin Lawyers’ Wives Club, it still holds as its purpose “to assist the legal profession through philanthropic endeavors, to present scholarship funds for law students at the University of Texas School of Law, and to promote sociability among members.” From the early days when virtually all spouses were wives, the organization has grown to include not only spouses, but also attorneys and any individual who supports the mission as set forth above.

While the early days of the organization might have included ladies’ luncheons with white gloves and fashionable hats, today’s volunteers are more likely to be seen in jeans and work clothes as they decorate for Adoption Day or conduct book drives for CASA and Dell Children’s Hospital. The group has not neglected the third pillar of its mission “to promote sociability among its members.” Activities this year have included touring the new Central Library and Chateau Bellevue, gathering for a happy hour and tour of the new Fairmont Hotel, and dancing at the Broken Spoke.

The ALA has an open membership policy and welcomes anyone interested in supporting its mission. The final activity of this year will be a social event in late April. Visit www.austinlawyersaux.com to learn more about the organization, its events, and programs.
Austin Black Lawyer Association Holds Legacy Luncheon

Three Attorneys Selected as Legacy Honorees

The Austin Black Lawyers Association held its annual Andrea Pair Bryant Legacy Luncheon at the Chateau Bellevue on Feb. 26, 2019. The luncheon is named in memory of Pair Bryant. The event recognizes outstanding members of the legal community for their service to ABLA and the community.

The Hon. Eric Shepperd served as Master of Ceremonies and the invocation was provided by the Hon. Harriet Murphy. The Legacy Honorees for 2019 were Brian Jammer, Kameron Johnson, and the Hon. Yvonne Williams.

Jammer is vice president of state government relations for Baylor College of Medicine. He is the longest serving ABLA president, having served approximately six years in that position. One of the founders of the Diversity Report Card, Jammer served as associate vice chancellor for government relations for the UT System. He is past chair of the Task Force on Higher Education Governmental Relations, and a past board member for both the National Bar Association and the Austin Bar Association.

Johnson is the chief juvenile public defender for Travis County. He is board certified by the Texas Board of Legal Specialization in both criminal law and juvenile law. Johnson is a former adjunct professor at the University of Texas School of Law, where he has taught juvenile law and trial and appellate advocacy. He currently serves on the Juvenile Law Section Council, Juvenile Exam Commission, and Legal Services to the Poor Committee for the State Bar of Texas. He also serves on various boards in the areas of juvenile law, criminal justice, and indigent defense.

Judge Williams has been the Justice of the Peace for Travis County Precinct 1 since 2011. Prior to her election, she was appointed as an associate municipal court judge and served as the city’s first overnight magistrate in Travis County Central Booking. Judge Williams’ commitment to addressing the issue of students being sent to court for failure to attend school resulted in her participation in the effort to have truancy cases decriminalized and the school-to-prison pipeline disrupted. Decriminalization was achieved and legislatively mandated in 2015, and Precinct 1 would eventually expunge over 15,000 juvenile cases. Judge Williams is also an adjunct instructor at Austin Community College where she teaches in the paralegal department.

The ABLA has been at the forefront of Austin’s legal community for almost four decades. The organization is committed to serving the community through community and service-based projects such as legal and educational projects and scholarship programs. ABLA’s members provide leadership, commitment, and dedication to enable them to positively impact Austin and the surrounding communities.

The ABLA will host the Virgil C. Lott Scholarship Topgolf Fundraiser on Sunday, May 19, 2019 from 3 to 6 p.m. at Topgolf. There will be drinks, food, prizes, and games. The cost is $60 for non-golfers and $100 for golfers. The proceeds fund college scholarships for graduating seniors in the greater Austin community. The Virgil C. Lott Scholarship honors Virgil C. Lott, who was the first African American to graduate from The University of Texas School of Law. Visit austinblacklawyers.org for more information or to register.
Until last year, I did not believe I was qualified to provide pro bono assistance. I am, after all, a niche practitioner who represents businesses in sales and franchise tax disputes against the Texas Comptroller. While my advocate heart often felt drawn to service, my head would always convince me that someone else was better-suited to help. My fear of not being able to help “perfectly” caused me not to help at all.

Then came the zero-tolerance immigration policy of family separation. I was horrified by the separation of parents and children at the border. As I rocked my toddler to sleep each night, I cried for the parents and children who could not do the same. I consumed, in dismay, the facts my friend and outstanding immigration lawyer, Kate Lincoln-Goldfinch, shared on social media. When I saw the Austin Bar Association’s announcement that, with Kate’s leadership, it would be conducting an immigration pro bono training program, I pushed aside my usual doubts and mustered the courage to volunteer.

A few weeks after I attended the training, I received a client through American Gateways. I studied the training materials, recruited an interpreter, and went to the T. Don Hutto Residential Center, a female-only immigration detention center in Taylor. Our job was to prepare our client for her credible fear interview, which is the first step in the asylum process. My client’s asylum claim was strong, and I sat in awe of her story and her strength. Although my client repeatedly thanked me for preparing her for this crucial interview, I was the grateful one because she confirmed that it is worth stepping out of my comfort zone to help another human. The help for which my client was so grateful was something that we lawyers, of all stripes, provide every day in our practices: break an issue into manageable steps and demystify the process.

In February of 2019, I made an immigration pro bono trip through RAICES to the Karnes County Residential Center, which is about an hour outside of San Antonio. This facility houses fathers and sons. I was assigned to conduct an intake of a father and his two-year-old son so that RAICES could provide future legal services for his asylum claim. While the little boy played with my assortment of highlighters and brightly colored post-it notes (I was not allowed to bring crayons or toys), his father explained, through tears, why he cannot return to his country. He was also devastatingly concerned about the impact that detention would have on his young son, in addition to the trauma of being separated from his mother. Again, the majority of my work that day was simply listening to the father, explaining the asylum process, and performing an intake so that RAICES could provide future services. As I sat across from this man (roughly my husband’s age) and played with his son (the same age as my son), I realized that I wouldn’t care if someone could help my family “perfectly.” I would just be so incredibly grateful that someone showed up to help at all.

Unfortunately, Texas has a number of vulnerable populations who greatly benefit from pro bono services. While you may not be called to serve the same population that I am, I encourage you to heed the call of service because it has been an incredibly positive experience for me. Humans need humans, especially those with a bar card.
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Paralegals Seek Austin Bar Membership
A “Win-Win” for Attorneys and Paralegals

BY CARLI COLLINS, TBLS BOARD CERTIFIED PARALEGAL

A highly skilled paralegal can have a big impact on an attorney’s overall success. Like a surgeon to a scrub nurse, an attorney relies on a paralegal to minimize complications and keep cases running smoothly. A good paralegal will prepare trial exhibits, listen to clients, and keep the attorney from missing a deadline. Essentially, a paralegal’s job is to make an attorney’s job easier. Now, paralegals are seeking membership to the Austin Bar Association—a move that will lead to the betterment of paralegals, attorneys, and the Austin legal community as a whole.

Paralegals have a history of membership in local and statewide professional organizations. Capital Area Paralegal Association (CAPA) has been in existence for over 40 years. The State Bar of Texas has had a paralegal division since 1981, and just last year the Williamson County Bar created a section for paralegals. Membership in the Austin Bar will give paralegals access to a broader variety of CLE and greater opportunities to provide and assist with pro bono services. Allowing paralegals to join the Austin Bar will bring in a barely tapped resource that can provide a variety of support to the organization in much the same way paralegals support attorneys in their daily professional lives.

The paralegal network of vendors, organizations, court staff, and educators will further expand the Austin Bar’s pool of volunteers, donors, and sponsors. CAPA sponsored the Austin Bar’s 125th Anniversary celebration last year, and this fall, in lieu of speaker gifts, the Paralegal Division of the State Bar will donate funds from its annual Texas Advanced Paralegal Seminar (TAPS) to the Austin Bar Foundation. TAPS will be held in Austin on September 18-20, 2019.

New issues and areas of law are emerging, and attorneys and paralegals alike need to stay educated. We work together—we should also learn together. Access to a broader range of CLE means a more knowledgeable, better-equipped paralegal—a benefit to attorneys, as well. Paralegals can also present accredited CLE to attorneys and staff. It’s a win-win for all.

Paralegals are already involved in several of the Austin Bar’s pro bono projects. We regularly volunteer at the Veterans Assistance Project and the Self-Represented Litigant Project at the Travis County Law Library. Several paralegals have attended each of AYLAs Communities First! Clinics, and two paralegals have traveled to Karnes Detention Center to volunteer with RAICES’ Immigration Crisis Response. Paralegals have also been an integral part of the CANLAW Clinic since its inception. After realizing the need for more efficient forms at the first two clinics, it was a paralegal who approached the founders and offered to create offline forms that would auto-populate, which led to a huge increase in the clinic’s efficiency. Paralegals have served as notaries, witnesses, and general “day of” support staff at each CANLAW Clinic. At the start of each clinic, a paralegal trains the notaries and witnesses in order to keep the signing ceremonies uniform. In between clinics, paralegals continue to offer behind-the-scenes support, whether it be searching for better rates on equipment, updating form documents, or training new volunteers. Each clinic runs more smoothly than the last. As the founders of CANLAW can attest, the paralegal community has provided (and continues to provide) invaluable support.

Paralegals enable success. Like a left tackle who coordinates the offensive line, we may not get all the glory, but we are an essential part of the team. We are there—at the office, at trial, at hearings—to make the attorney’s job easier. Paralegals take pride in making attorneys look good, and as members of the Austin Bar, we will strive to do the same for the organization.

EDITOR’S NOTE: Currently, paralegals can join the Austin Bar as honorary members. In April, the membership of the Austin Bar will vote on a change in the organization’s bylaws to grant paralegals full member status. The vote on the bylaw change will be on the same ballot with the Austin Bar and AYL A officer and board elections. The ballot will be emailed on April 12, with online voting available until 5 p.m. on May 2. Paper ballots will be available at the Bench Bar Conference and Annual Meeting until 5 p.m. on Friday, May 3, 2019.
In reading about writing, I’ve run across the following advice, here from H.W. Fowler: “Prefer the Saxon word to the Romance.” But I never paid much attention because I didn’t know what it meant. When I finally learned, I saw that the advice could apply to legal writing, too. This column gives some background and offers a recommendation.

Two key sources of English words are Anglo-Saxon and Latin; many words of Latin origin are also French and are sometimes referred to as being of “Romance” origin. Yes, I’m skipping the history lesson, but some common examples can help make the point. Here are four paired synonyms; the first is of Anglo-Saxon origin and the second is of Latin/French/Romance origin: break/damage, come/arrive, make/create, and need/require.

We can immediately make some generalizations. Saxon words tend to be shorter—often single syllable, and harder in sound. They also tend to be concrete rather than abstract, and less formal, too. We might say Saxon words are plain, and Romance words are fancy: boss/superior, job/position, wish/desire, and lawyer/attorney. Here are five Saxon verbs—try to think of the Romance synonyms: ask, buy, eat, see, and talk. (Answers at the end of the column.)

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What can we do with this knowledge? Replace Romance words with Saxon words—but not always. The best writing advice is rarely always or never. Instead, generally choose Saxon words but use your editorial judgment, considering audience, tone, persuasion, and legal terms. Here are some before-and-after examples from appellate briefs.

**Before:** The City Planner agreed that Hemet’s lot was adjacent to the single-family homes.

**After:** The City Planner agreed that Hemet’s lot was next to the single-family homes.

- This is a sensible edit that substitutes a shorter Saxon word for a longer Romance word, making the text a bit more readable.

**Before:** Mr. Castillo asserts that Ms. Castillo has no constitutional right to the effective help of counsel in a divorce suit.

**After:** Mr. Castillo asserts that Ms. Castillo has no constitutional right to the effective assistance of counsel in a divorce suit.

- Probably not a good edit. “Effective assistance of counsel” is a standard legal phrase. Don’t replace Romance with Saxon when the Romance term is, or is part of, standard legal language.

**Before:** But a video camera won’t prevaricate.

**After:** But a video camera won’t lie.

- This is a solid edit. If you’re willing to begin a sentence with but and use a contraction, the Saxon lie delivers more force than the Romance prevaricate.

But wait, you might be saying. I can achieve the same clarity and force in my writing just by using a short word in place of a long one. How does it help me to know that the short words are Saxon and the long ones are Romance?

I hope it helps in two ways. It raises your writing IQ, something I believe lawyers, as professional writers, should seek. And that knowledge can lead to other insights based on the Saxon/Romance distinction, which I plan to discuss next month. (Quiz answers: ask/inquire, buy/purchase, eat/consume, see/observe, and talk/converse.)

Footnotes

Wayne Schiess’s Austin Lawyer columns are collected in a book available on Amazon.com: Legal Writing Nerd: Be One.
The Austin Bar Association’s Diversity Fellowship Program is led by Judge Lora Livingston, Judge Eric Shepperd, the Hon. Rudy Metayer, Tony Nelson, and Leslie Dippel. The law firms that generously participated in 2018, making the entire program possible are: Armbrust & Brown; The Fowler Law Firm; Graves Dougherty Hearon & Moody; Howry Breen & Herman; Jackson Walker; Lloyd Gosselinck; Locke Lord; McGinnis Lochridge; Naman Howell Smith & Lee; and Clark Hill & Strasburger. Special recognition is given to McGinnis, Graves, and Armbrust which have faithfully supported the program from the very beginning, and to Jackson Walker, Naman Howell, and Clark Hill—new firms which joined the program last year.

Of course, the real stars are the students themselves whose excellence demonstrates the core principles of the program. Firms interested in joining this year’s Diversity Fellowship Program or in making a contribution should contact Delaine Ward at Delaine@austinbar.org.

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Featured on
The following are summaries of selected civil opinions issued by the Third Court of Appeals during January and February 2019. The summaries are an overview; please review the entire opinions. Subsequent histories are current as of March 4, 2019.

TRIAL PROCEDURE: Court grants mandamus relief in attorney-disqualification case. In re Luecke, No. 03-18-00553-CV (Tex. App.—Austin Feb. 20, 2019, orig. proceeding). Limited partner sued general partner derivatively on behalf of partnership for mishandling property. Limited partner’s attorney also represented a trust suing the general partner over the same property. The trial court disqualified limited partner’s attorney. The sole ground to support disqualification was the contention that only a general partner could waive a conflict of interest on behalf of a partnership. According to the court of appeals, because a limited partner has authority to sue derivatively on behalf of a partnership, she also has the right to waive conflicts of interest for purposes of a derivative action. The court concluded the trial court abused its discretion and granted mandamus relief.

TRIAL PROCEDURE: Court grants mandamus relief when request for jury trial is denied. In re Pool, No. 03-18-00299-CV (Tex. App.—Austin Jan. 23, 2019, orig. proceeding) (mem. op.). Following a hearing, a municipal court judge ordered that a dog involved in an attack was a dangerous dog. Owner filed a notice of appeal to county court and requested a jury under Health and Safety Code § 822.0424(a). The county court denied the jury request based on Government Code § 30.00014(b), which provides that appeals from municipal courts of record are not de novo. Construing the two provisions, the court of appeals concluded that the Government Code’s bar to a jury trial applied to criminal convictions, not civil judgments. Thus, the county court abused its discretion in denying a jury trial. The court further concluded that owner had no adequate appellate remedy. Forcing owner to try her case without a jury would render that trial a nullity on appeal. The court granted mandamus relief.

FAMILY LAW: Misrepresentation of age does not constitute marital fraud. Zielinski v. Zielinski, No. 03-18-00063-CV (Tex. App.—Austin Feb. 8, 2019, no pet. h) (mem. op.). Husband filed a bill of review seeking to vacate a two-year-old divorce decree and annul the marriage based on wife’s misrepresentation of her age. Husband argued that the Family Code permits an annulment if one party uses fraud to induce the other party to enter the marriage. The trial court denied the petition. The court of appeals concluded that husband failed to establish fraud. Husband relied on several documents in which wife misrepresented her age. Wife contended that husband knew or should have known her actual age by the time they divorced. Throughout the marriage, wife listed her correct age on numerous documents, which were available to husband. Thus, husband could not obtain an annulment based on his lack of diligence in the divorce proceeding. The court affirmed.

FAMILY LAW: Court affirms denial of grandparent access. Murphy v. Renteria, No. 03-18-00014-CV (Tex. App.—Austin Feb. 13, 2019, no pet. h.) (mem. op.). The trial court appointed grandparents temporary managing conservators of their grandson in light of allegations of abuse and neglect. Grandparents later withdrew their request for managing conservatorship and sought to be named possessory conservators. The trial court denied grandparents’ request and appointed the child’s parents as joint managing conservators. The court of appeals addressed whether grandparents met their burden to prove that denying possession or access would significantly impair grandson’s health or well-being. Grandparents argued that having a right of possession would allow them to step in if mother endangered the child in the future. Child’s father agreed to allow grandparents access. Accordingly, the court concluded that the trial court did not abuse its discretion and affirmed.

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 Laurie Ratliff LLC.
The cases summarized are from August 2018 and subsequent histories are current as of February 27, 2019.

ELECTRONIC HARASSMENT: Statute prohibiting electronic harassment not facially unconstitutional.

Ogle was charged under Section 42.07(a)(7) of the Penal Code with sending “repeated electronic communications” to two police officers, “with intent to harass, annoy, alarm, abuse, torment or embarrass” them. Prior to trial, Ogle filed an application for writ of habeas corpus, asserting that the statute was facially unconstitutional. The trial court denied the application, and the appellate court affirmed. The court first observed that Section 42.07 had previously survived similar constitutional challenges. In *Scott v. State*, 322 S.W.3d 662 (Tex. Crim. App. 2010), the Court of Criminal Appeals held that Section 42.07(a)(4) did not implicate the First Amendment because the prohibited speech was “essentially noncommunicative” and was intended only to “inflict emotional distress for its own sake.” And in *Blanchard v. State*, No. 03-16-00014-CR (Tex. App.—Austin June 2, 2016, pet. ref’d) (mem. op., not designated for publication), the Austin court held that the similarly worded Section 42.07(a)(7) did not violate the First Amendment because harassing messages “are not the type of legitimate communication that is protected by the First Amendment.” Following the reasoning in these and other cases, the court concluded that Section 42.07(a)(7) was not facially overbroad because it was directed at people who were “repeatedly using electronic communications to invade the personal privacy of another with the intent to inflict emotional distress.”

MULTICIPlicity: Defendant’s claim that indictment charging him with multiple offenses violated Double Jeopardy was not cognizable on pretrial habeas.
*Ex parte Chapa*, No. 03-18-00104-CR (Tex. App.—Austin Aug. 22, 2018, pet. ref’d) (mem. op. on reh’g, not designated for publication). Chapa was charged with five counts of aggravated sexual assault of a child, two counts of indecency with a child by contact, and two counts of indecency with a child by exposure. In a pretrial application for writ of habeas corpus, Chapa asserted that multiple counts of the indictment alleged the same offense and thus exposed him to the risk of multiple punishments for the same offense. The trial court denied relief, and the appellate court affirmed. The court recognized that although a double-jeopardy claim is ordinarily cognizable on pretrial habeas, such claims usually involve successive prosecutions, under the theory that “the State, with all its resources and power, should not be allowed to make repeated attempts to convict an individual for an alleged offense.” Thus, in those cases, “the pretrial habeas applicant is unlawfully restrained because the pending criminal charge restrains the applicant for the same offense for which jeopardy has already attached.” However, in the multiple-punishments context, jeopardy has not yet attached. To the extent that a defendant might receive multiple punishments for the same offense during sentencing, that claim could be raised on direct appeal. For these and other reasons, the court concluded that Chapa’s claim was not cognizable on pretrial habeas.

FRIVOLOUS HABEAS APPLICATIONS: Trial court erred in denying habeas application as frivolous.
*Ex parte Morales*, No. 03-17-00461-CR (Tex. App.—Austin Aug. 31, 2018, no pet.) (mem. op., not designated for publication). Morales pleaded no contest to allegations that she improperly deleted public emails from her county-issued laptop. She subsequently filed an application for writ of habeas corpus, asserting that she had received ineffective assistance of counsel. The trial court dismissed the application as frivolous. The appeals court reversed, concluding that although the trial court was entitled to deference as a fact finder, it was not entitled to deference on its frivolousness determination. According to Code of Criminal Procedure article 11.072, section 7(a), an application can be denied as frivolous only if it is clear, “from the face of an application or documents attached to the application,” that the applicant “is manifestly entitled to no relief.” In this case, there was no such clarity. Morales presented evidence in her application tending to show that the emails she deleted were personal rather than public and that if she had known this, she would have insisted on going to trial. Consequently, the appeals court could not conclude as a matter of law that her habeas application was frivolous and remanded the cause to the trial court for a determination on the merits of her application.
CIVIL PROCEDURE: After a defendant has answered, plaintiffs are entitled to dismissal by motion under Rule 41(a)(2) “on terms the court considers proper” with the opportunity to retract a motion to dismiss if the court’s conditions are found to be too onerous. Welsh v. Correct Care, LLC, No. 17-11522 (5th Cir., Feb. 7, 2019). Federal Rule of Civil Procedure 41(a)(1)(A)(i) grants plaintiffs an absolute right to unilaterally dismiss their lawsuit before the defendant has filed an answer or a summary judgment motion. If the defendant has filed an answer or a summary judgment motion, however, Rule 41(a)(2) permits dismissal at the plaintiff’s request “only by court order, on terms that the court considers proper.” Unless otherwise stated in the order, a dismissal under either subsection is without prejudice.

Defendant McLane filed an answer to Welsh’s earlier complaint, but he did not answer Welsh’s later-filed amended complaint. Nevertheless, because McLane filed an answer, the district court’s dismissal of Welsh’s claim against him fell under Rule 41(a)(2), which allows the court to impose conditions on the dismissal. The district court dismissed Welsh’s claim with prejudice. A plaintiff typically “has the option to refuse a Rule 41(a)(2) voluntary dismissal and to proceed with its case if the conditions imposed by the court are too onerous.” Thus, “before requiring a Rule 41(a)(2) dismissal to be with prejudice, a court must allow a plaintiff the opportunity to retract his motion to dismiss” rather than accept the dismissal with prejudice. Here, Welsh was not given the opportunity to withdraw the motion and reject the condition of dismissal with prejudice. Thus, the Court of Appeals remanded the matter to the district court.

RULES OF EVIDENCE: Lay opinion testimony is limited to that which is “rationally based on the witness’s perception” and “not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. R. Evid. 701. Wallace v. Andeavor Corp., No. 17-50927 (5th Cir., Feb. 21, 2019). Federal Rule of Civil Procedure 26, a party is required to disclose the identity of expert witnesses it plans to use at trial to present evidence under Federal Rules of Evidence 702, 703, or 705. In disclosing the identity of the expert witness, a party is also required to submit a written report. Fed. R. Evid. P. 26(a)(2)(B). Wallace did not timely disclose Rule as an expert or provide a report for Rule.

The Court of Appeals affirmed the granting of summary judgment. Johnson v. Ocwen Loan Servicing, LLC, No. 18-10257 (5th Cir., Feb. 21, 2019). Federal Rule of Civil Procedure 54(b) allows entry of an appealable judgment on one or more claims even when trial court litigation remains for other claims. Here, after the district court rejected all but one claim, it entered a Rule 54(b) judgment allowing an appeal before the final claim was resolved. Thirty days passed without an appeal. After the district court resolved the remaining claim, plaintiff appealed rulings from both judgments. Plaintiff’s appeal focused on the federal claims that were dismissed in the Rule 54(b) judgment. That partial final judgment started its own clock for filing a notice of appeal. Because Plaintiff filed her notice more than thirty days after entry of the Rule 54(b) judgment, her appeal of those rulings is untimely. Regardless how events turned out, what matters is that Plaintiff missed the deadline for appealing the Rule 54(b) judgment. Accordingly, the Court of Appeals concluded that Plaintiff’s appeal was untimely, and it dismissed the matter for lack of jurisdiction.
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How much do defendants in criminal cases owe society? That is a question with a premise: defendants have a “debt” which they must repay. The premise is almost universally accepted. Although I find it more complicated than that, for today I will just discuss a recent Supreme Court case that accepts the premise and holds that the answer lies in the Constitution: Timbs v. Indiana, 586 U.S. ___ (2019).

Mr. Timbs pleaded guilty to a drug dealing offense and a theft offense in Indiana state court. He owned a Land Rover that he had purchased with an inheritance—i.e., “clean” money. Indiana tried to forfeit the vehicle, and while the trial court and appellate court denied that request, the Indiana Supreme Court held that the Excessive Fines Clause of the Eighth Amendment does not apply to state fines, only federal fines. So at one level, the decision—which was unanimous as to the judgment—was a straightforward Fourteenth Amendment “incorporation” case, which you may remember from law school.

While evidence showed Timbs’s vehicle “had been used to facilitate violation of a criminal statute,” its $42,000 value was more than four times the maximum $10,000 fine assessable against him; that was “excessive” under the Eighth Amendment.

In Timbs, the Court weighed in, albeit in a limited way, on the brewing issue of excessive use of civil forfeiture in the American criminal justice system. Civil forfeiture laws haven’t traditionally afforded people the protections afforded criminal defendants. As the Institute for Justice has noted, state laws in many cases create “incentives [for law enforcement] to seize property for financial gain.” Agencies doing the seizing are often allowed to keep up to 100 percent of the proceeds within agency, rather than having to put them in a general fund for the state.

Those incentives have created abuses. In the small town of Tenaha, in East Texas, law enforcement got millions of dollars through highway traffic stops. When officers discovered cash during stops, officers seized it, threatened owners with criminal charges (and even taking away their children) and then used the money for—among other things—a popcorn machine and donations to the local chamber of commerce. In one case, it even went directly into one officer’s pocket (this is discussed in “Taken”). As Louis Rulli, clinical professor at University of Pennsylvania Law School put it, “[c]ivil asset forfeiture was an area of the law that was under the radar and very prone to abuse.” He noted that for “real-estate forfeitures, it’s overwhelmingly African-Americans and Hispanics.”

Here’s hoping that lawyers use the Court’s belated ruling on incorporation of the Excessive Fines Clause as a new tool for rectifying past abuses and new ones. In 2017, Texas seized over $50 million in assets using civil and criminal forfeiture, so we have plenty of opportunity to litigate. Newly minted Fifth Circuit judge Don Willett has something to say about that: “A generation ago in America, asset forfeiture was limited to wresting ill-gotten gains from violent criminals. Today, it has a distinctive ‘Alice in Wonderland’ flavor, victimizing innocent citizens who’ve done nothing wrong.” The atmosphere is ripe for proactive litigation. Any “takers”? —

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
During a recent attempt to clear out some files in my office, I came across some work I had done for a client several years ago. The cases themselves were nothing extraordinary; they certainly were not the most exciting matters on which I’ve worked during my legal career. However, in reviewing the work of my younger self, I was pleased to find I had done quite satisfactory work. I note this not to boast, but because I can recall a less experienced version of myself sometimes lacking confidence or wondering whether I actually knew what I was doing. It turns out I wasn’t alone. Many professionals, including attorneys, suffer from imposter syndrome, defined simply as having feelings of inadequacy and self-doubt despite overwhelming evidence of success.

So, how do we combat these self-defeating thoughts? One method might be to rely on your track record of success. Growing up, my Mexican-born parents would often relay dichos, or Mexican proverbs, to my siblings and me. My favorite was “el que es buen gallo, en cualquier gallinero canta,” which informs us—that, not a literal translation—that those with talent and skill will perform well in any venue. This saying would likely apply to all attorneys suffering from self-doubt, all of whom likely excelled in school and in most or all of their prior endeavors, meaning they have the skills and talent to perform well in their current situation. In other words, you should trust that the intellect and hard work you’ve used to get this far in your career will continue to yield great results for you, despite minor obstacles along the way.

You can also aim to become an expert in a specific area of the law, even something that is very narrowly tailored. Nothing breeds confidence like the experience of knowing a subject like the back of your hand. As a junior associate at my firm, I became very familiar with post-judgment enforcement remedies, an area in which not many attorneys at my firm were familiar. I never realized how much practical experience I had gained until I was asked by other attorneys to provide advice for their particular post-judgment enforcement issues.

If you’ve been practicing for fewer than five years, or if you are in a new practice area, understand that you will gain confidence and skills each time you accomplish a new task. While you might be nervous for your first deposition, you’ll feel confident by the time you take your fifth. Any attorneys dealing with imposter syndrome should also understand they are not alone. Don’t be afraid to reach out to friends and mentors.

Finally, remember to go easy on yourself. You probably know by now that you will—despite your best efforts—make mistakes in the practice of law. You will not be perfect, win every case, get every client, or close every deal. But if you work hard, and trust yourself and the skills that got you where you are today, you may one day look back and realize you were doing a pretty good job all along.
Candidates Announced for AYLA Board of Directors

Elections to be Held April 12 – May 3, 2019

The Austin Young Lawyers Association announces its candidates for the 2019-20 Board of Directors. A link to the electronic ballot will be sent in an email on Friday, April 12, 2019. Please add noreply@ballotboxonline to your safe-senders list. The last chance to vote will be at the annual member meeting conducted at the Bench Bar Conference on Friday, May 3, 2019.

The following candidates are running for the AYLA officers and board of directors. The new board will take offce on July 1, 2019, along with Sandy Bayne, who will serve as AYLAs president. Bayne is a founding partner of BayneLaw. She is a 2013 graduate of the Austin Bar/AYLA Leadership Academy and has served on the AYLA board as director, secretary, and treasurer and has co-chaired AYLAs Judicial Reception and Runway for Justice events for several years.

OFFICERS
The only contested officer’s race is for the office of treasurer. Candidates for treasurer are Rachael Jones and Francesca Di Troia.

Jones has been actively involved in AYLA and the Austin Bar Association since becoming licensed in 2014. She has been a member of the AYLA board of directors since 2016, served as the board’s secretary for the 2018-2019 bar year, and is also an Austin Bar/AYLA Leadership Academy graduate.

Di Troia is an Assistant Attorney General in the Tort Litigation Division. She has served as an AYLA director for the past two years and has been involved in the Membership, Docket Call, YMCA, Reindeer Games, Runway for Justice, Community Service Days, and Race Judicata committees.

David King is running unopposed for president-elect. King has been an AYLA Director since 2015. He is currently treasurer of AYLA and previously served as secretary. He is also co-chair of AYLAs Bench Bar Conference and Holiday Programs committees. King is a shareholder at Graves, Dougherty, Hearon & Moody, and he serves on the board of directors of Mainspring Schools.

Blair Leake is running unopposed for secretary. As an AYLA director, Leake has worked to rebuild the Community Service Days Committee, which now hosts monthly volunteer events with local charities. He has chaired that committee for the last two years, and has served for the last three years on the Runway for Justice Committee. He has also served on other AYLA committees, including the Women’s Resource Fair and MLK Day of Service.

DIRECTORS
Eight candidates are vying for four 2-year terms on the board of directors. The four elected board members will join directors Michael Choate, Sarah Harp, Eric Nelson, and Kayvon Rashidi, whose terms expire in 2020, along with Erin Smith Bennet, director at large.

Ben Dower has been an ex-officio member of the AYLA board of directors since 2016. He is involved in the Barbara Jordan Inn of Court, the Austin Bar/AYLA Leadership Academy, and the Texas Law Mentoring Program. His AYLA committee involvement includes YMCA Youth and Government Program, Runway for Justice, Community Service Days, and MLK Day of Service.

Catherine “Cathy” Garza practices regulatory and commercial litigation at Eversheds Sutherland. She has served as an ex-officio member of the AYLA board since 2017. She has served as chair of the Bar & Grill Committee, as a member of the Runway for Justice Committee, and as a volunteer for MLK Days of Service and Community First! Village Legal Clinics.

Emily Morris is the managing attorney of The Morris Law Firm. Morris is co-chair of the Austin Bar/AYLA Leadership Academy’s Leadership Committee and is active in the Travis County Women Lawyers Association.

Matt Rappaport advises attorneys and their clients as their personal wealth manager. He began his legal career with McKool Smith, litigating patent infringement cases. He currently works at UBS Financial Services, Inc. Rappaport volunteers as a mediator with the Austin Dispute Resolution Center.

Justin Rosas practices school law with an emphasis on labor and employment litigation. He founded an organization to mentor young Hispanic boys in the Austin area and is a member of the 2019 Austin Bar/AYLA Leadership Academy class.

Katharine Weaver practices health insurance law and enjoys serving as a legal aid attorney at Volunteer Legal Service’s weekly clinic.
The Top 7 Things To Know About Employment Law Right Now

BY AUSTIN KAPLAN

#METOO

#MeToo is here to stay, causing C-suite resignations, enhanced EEOC activity, and increased awareness of how pervasive sexual harassment and assault are. However, the long-term effect on Texas employment law remains unclear. In 2017, the Texas Supreme Court held that employees may hold employers responsible in tort for physical sexual assaults by their vice principals. Employees at most workplaces also have the long-standing right to be free from sexual harassment. To preserve those claims, employees must usually file a charge within 300 days of the harassment. All employers should review their policies and renew their harassment training.

WAGE AND HOUR/OVERTIME

Fair Labor Standards Act (FLSA) claims for unpaid wages and overtime continue to dominate employment law filings. Employees should be vigilant about their pay. Employers should consider a review of pay practices. Target jobs include: tipped employees, warehouse workers, drivers, oil-field workers, and legal secretaries and paralegals!

WRONGFUL TERMINATION/RETAIATION

Most employees are at-will, meaning they can be fired for good reason, bad reason, or no reason at all, but not for an illegal reason. State and Federal Statutes protect race, color, religion, national origin, gender, pregnancy, disability, age (over 40 years old), veteran status, and others. Employees may...
also be protected if they engage in concerted activity fighting for better wages, hours, or working conditions, report safety violations in health care, or report or oppose an employer’s fraud on the federal government.

**DISABILITY RIGHTS**

Statutes like the Americans with Disabilities Act and the Family and Medical Leave Act protect employees with certain physical and mental medical conditions. Employees have rights even if they get injured off the job. Both employees and employers should review the law to avoid a minefield before making decisions involving health issues and medical leave.

**DOCUMENT TO AVOID DISPUTES**

Documentation is critical for employees and employers. Employees need to immediately report and document instances of discrimination and retaliation. Employers need to document their responses. Employment disputes are a war often won by whoever generated the best documentation.

**EPIC SYSTEMS ARBITRATION**

Class and collective action waivers in employment arbitration agreements are the latest trend. Employees need to read all agreements presented upon hire before signing and should negotiate arbitration clauses whenever possible. Employers should carefully consider whether to implement employment arbitration agreements—the cost of individual/mass arbitration can be more expensive than the likely value of the claims at issue.

**ATX SICK TIME ORDINANCE**

The Austin City Council passed an ordinance requiring all Austin employers to provide paid sick time, but the Third Court struck the ordinance before it took effect. The Legislature is now considering a bill to ban similar ordinances.

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**Footnotes**

4. In Austin, employees can file charges with either the EEOC, TWC, or the City of Austin Fair Housing Authority.
5. Texas has one non-statutory protection, and it only applies when an employer fires an employee for the sole reason that the employee refused to commit a criminal act.
6. See e.g., https://www.nlrb.gov/rights-we-protect/protected-concerted-activity (explanation of the NLRA’s application to both unionized and non-unionized workplaces).
7. Epic Systems Corp. v. Lewis, 584 US ___ (2018) (holding employer class and collective actions waivers are enforceable against employees).
8. Sought-after employees may have the leverage to negotiate employment agreement terms, including arbitration terms and noncompete restrictions, before signing. If you or your client have that leverage, ask for the proposed employment documents ahead of time and negotiate those terms.
The Texas Board of Legal Specialization (TBLS) announced the board certification induction of 266 attorneys and 35 paralegals at its annual induction ceremony on March 1, 2019.

The ceremony was attended by more than 600 Texas attorneys, paralegals, and family members from across the state, as well as Texas Supreme Court Justices and partnering organizations. New board-certified attorneys spanning more than 20 specialty areas were sworn in as well as new board-certified paralegals among eight specialties. During the ceremony, TBLS also recognized certification in its newest attorney specialty areas, Child Welfare Law and Property Owners Association Law (POA).

There are more than 100,000 attorneys licensed to practice in Texas and only around 7,400 are board certified, which is a volunteer attainment. Board-certified attorneys must be licensed for at least five years, devote a required percentage of practice to a specialty area for at least three years, attend continuing education seminars, be evaluated by fellow lawyers and judges, and pass a written examination. Attorneys must apply for recertification every five years.

Congratulations to the following Austin Bar members on receiving their board certifications.

**Child Welfare Law**
- Kathleen M Drummond
- Hon. Aurora Martinez Jones
- Lynn Marie LeCropane

**Civil Appellate Law**
- David Jay Campbell

**Estate Planning and Probate Law**
- Marion Leigh Vance Banaszak
- Elizabeth Lynn Daniel
- Gabriel Gorena Gallas

**Family Law**
- Kacy L. Dudley
- Jamie Matthew Kerr
- Dale Elliott Royer
- Raul Sandoval

**Labor and Employment Law**
- Shannon Harpold Hutcheson

**Property Owners Association Law**
- Alexander Shin Valdes
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