



LAW LIBRARY NEWS

a publication of the Fort Bend County Law Library

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Open House

The Law Library will celebrate its **32nd Anniversary** on **January 14th** starting at **9 am** with coffee and snacks. This year, we will celebrate by offering three **FREE CLE** opportunities. The first is an **Attorney Lecture Series** on **Guardianships** at **10 am**. Second, a **Westlaw CLE** on **Estates and Probate** at **11 am**, and finally a **Lexis Advance** CLE with an **Introduction to Legal Research** using the database and a focus on probate and estates at **2 pm**. Open House ends at 4 pm. For more information, contact the Library.

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New & Updated Resources

O'Connor's Texas Series

- *Employment Codes*
- *Rules of Evidence*
- *2021 Editions*

Texas Trial Procedure & Evidence

- *2021 Edition*



Texas Drink Driving Law

- *2021 Edition*

Trial Objections

- *2021 Edition*

Texas Practice Guide

- *Civil Pretrial*
- *Family Law*
- *2021 Editions*

Texas Criminal Lawyers Handbook

- *2021 Edition*

Blue's Guide to Jury Selection

- *2021 Update*

U.S. Master Tax Guide

- *2021 Edition*

FBC Bar News

Fort Bend County Bar Association

The **Fort Bend County Bar Association** has a **monthly meeting and CLE** on Thursday, **January 30** at **noon**. Contact the Bar for more information.

Family Bar of Fort Bend County

The **Family Bar of Fort Bend** will have their **monthly meeting and CLE** on Monday, **January 6** at **noon** at Buena Vista. RSVP not required.

Fort Bend County Criminal Defense Attorneys Association

The **Fort Bend County Bar Association** has a **monthly meeting and CLE** on Thursday, **January 23** at **noon**. Contact the Bar for more information.



Featured Resource: Spotlight on Estate Planning & Probate Resources

By Jonathan Briggs

A significant amount of the cases handled by the County Courts at Law here at the Justice Center are probate matters. Most often they are uncontested but they still require a level of precision and care to fully and properly dispose of the estate. Further, this is an area of the law that is going to touch most of us in some way...either we will have to handle the estate of a loved one, we may be asked to be an executor, or we will simply be taking the steps to plan and execute the documents necessary to prepare as best we can for this eventuality for ourselves and our family members. Whether you are an attorney practicing in this field, a person who is going to engage the services of an estate planning and probate attorney, or a pro se patron who is wanting to do their own estate planning or pursue a probate matter, the Fort Bend County Law Library has an extensive collection of print and online materials to inform and assist you in this regard. However, first, I want to apprise you of some very helpful and important materials available on the County's webpage. The six County Courts at Law are the probate courts for Fort Bend. <https://www.fortbendcountytexas.gov/government/departments-a-d/county-courts-at-law>. The County Clerk's office handles the probate filings. <https://www.fortbendcountytexas.gov/government/departments-a-d/county-clerk>. On the County Courts' website there is a link to the page "Probate Forms/Information": <https://www.fortbendcountytexas.gov/government/departments-a-d/county-courts-at-law/probate-forms-information>. This contains important and useful information and forms, including the "Court Policy Regarding Pro Se Applicants." As far as what the Law Library has, let's begin with **Lexis'** online and print materials. The starting point is probably *Texas Estate Planning* (online only) providing information and forms for wills, trusts, etc. Foremost in this list is probably the treatise and practice guide *Texas Probate, Estate, and Trust Administration* (print and online) providing among other things a plethora of detailed information and forms for initiating various types of probate and contested cases. **James Publishing's** materials are part of the **Lexis** family and its *Texas Probate Forms & Procedures* (print and online) is a great all-in-one-volume text with information and forms...this is very often the starting point we use when assisting pro se patrons with probate issues. **Thompson Reuters Publishing** and **Westlaw** provide information and forms for estate planning and probate both in print and online from a multitude of resources: the **O'Connor's** series with the *Texas Probate Law Handbook*, *Davis's Texas Estate Planning Forms*, and *Texas Estates Codes Plus*; there is *West's Texas Forms*; the *Texas Practice Guide* with volumes on "Wills, Trust & Estate Planning"; and, the *Texas Practice Series* has multiple volumes on "The Law of Wills" and "Probate & Decedent's Estates." The State Bar's *Guardianship Manual* and its venerable *Texas Probate System* are in print and available in **PDF** on the desktop of each patron computer. As far as primary law goes, we have the Texas cases and the **Estates Code** available in several mediums...in print and online via **Lexis** and **Westlaw**. This gives you some idea of the depth and breadth of materials we have just in this one area of the law. Materials can be either downloaded to your thumbdrive or e-mailed to you for free or printed/copied in black and white for 10 cents per page. Let the Law Library be your resource for estate planning and probate materials! We are on the 2nd floor of the Justice Center or contact us via phone at 281-341-3718 or by e-mail at: llpublic@fortbend.lib.tx.us.

Technology Corner: Finding Resources on VitalLaw

By Andrew Bennett

If you haven't used VitalLaw, here is a quick way to find resources on the databases. First, you can find the link to it on any of the Law Libraries' computers. It has the logo to the right here. Once you click on it, it will open up to the main page of the database. You have the option to search, but the easiest way to get to resources is to jump to a topic. For example, clicking on Elder Law and Estates resources, you immediately go to the *Elder Law Portfolio*. Once inside the ebook, you can jump to a particular section by using the left hand pane. Opening the "+" sign allows you to open up the whole section and select on subtopics. Clicking on the document you want, then opens it up the larger right hand pane. The search bar at the top allows you to search for keywords within the resource. Those keywords will then be highlighted. Once you find the document you want, you can then print, email, or download the document to a flash drive. To look at primary law, go back to the main page by clicking on the VitalLaw Icon in the top left corner. Then click on "Laws and Regulations." Here you can find statutes and codes for all 50 states, the United States Code, and Code of Federal Regulations. For more information, visit the Law Library.



VitalLaw™
(formerly known as Cheetah)



Community News

- The **Fort Bend County Law Library** still has three remote databases including *Gale Legal Forms Library*, *Legal Information Reference Center*, and *Lexis Digital Library*. You will need a library card to access. Visit our website at www.fortbend.lib.tx.us.
- The **Texas State Law Library** has a lot of **digital resources** at your disposal. Please **create a digital library account** for access. For more information, visit their website at <https://www.sll.texas.gov/about-us/get-a-library-account/>.
- **Re:search TX** allows you to research case law from all 254 Texas counties. Some documents do require payment to access. Account set up is free. Go to <https://research.txcourts.gov/CourtRecordsSearch/Home>. Or you can check out Google Scholar for case law research at <http://scholar.google.com>.
- **Harris County Law Library** is open again to the public by appointment ONLY. They are continuing their virtual programs. To sign up or find more information, visit their website here: <https://www.harriscountylawlibrary.org/>

Texas Lawyers Assistance Program

The State Bar of Texas offers confidential assistance to attorneys, judges, and law students who are facing substance abuse and mental health issues through its [Lawyers Assistance Program](#). Professional staff members are available 24/7 by phone to help with crisis counseling and referrals to local professionals and support groups. For assistance, call 1-800-343-8527.

Contact

If you have any information on upcoming CLEs, conferences, etc. that you think would be useful to include in the newsletter, please send an email to abennett@fortbend.lib.tx.us with "Newsletter" as the subject. To unsubscribe, write "unsubscribe."

Useful Articles and Links

- ***Home Is Where We Unite***. Texas Bar Journal. December 2021. <https://www.texasbar.com/AM/Template.cfm?Section=articles&Template=/CM/HTMLDisplay.cfm&ContentID=55261>
- ***Zealous Advocacy and Zealous Problem Solving: A Lawyers Guide to Ethical Problems in Mediation***. Houston Lawyer. December 2021. <https://www.thehoustonlawyer.com/>
- ***The Law of Jury Selection Qualification & Disqualification in the Art of Voir Dire***. Voice for the Defense. December 2021. <https://www.voiceforthedefenseonline.com/current-issue-december-2021/>



Texas Case Law Update

Local Cases

- [In Re Maintenance of Way Equipment Services, LLC](#), No. 01-21-00515-CV (December 2, 2021): Pet. Writ Mand. Dism'd. (CCL#3)
- [Ex Parte Alan N. Crotts](#), No. 01-21-00239-CR (December 2, 2021): Aff'd. TC Judgment. (CCL#3)
- [City of Houston v. Young Ran Kim](#), No. 01-20-00333-CV (December 7, 2021): Aff'd. TC Judgment. (268th)
- [In Re Jason T. Pegues](#), No. 01-21-00676-CR (December 16, 2021): Pet. Writ Mand. Denied. (434th)
- [Paul B. Rosen v. Peterson New Territory Investors](#), No. 14-21-00298-CV (December 2, 2021): Rev'd. & Rem. (268th)
- [Willie A. Griffin, Jr., v. Fort Bend County, Texas](#), No. 14-20-00538-CV (December 9, 2021): Aff'd. TC Judgment. (434th)
- [Monica Farris v. Ruchita Real Estate, LLC](#), No. 14-21-00439-CV (December 9, 2021): Appeal Dism'd. (CCL#6)

Judicial Administration—Discipline—Appointment of Mediators

In Re Inquiry Concerning Honorable Carl Ginsberg, 630 S.W.3d 1 (Tex. 2018). Judge Ginsberg presided over the 193rd Judicial District Court of Dallas County 2007 to 2018 and is now the Tax Court and Visiting Judge. “Ch. 37 of the Texas Government Code governs appointment of ad litem and mediators. §§ 37.001-.005. He issued a standing order that the statute violates the separation-of-powers clause of the Constitution. *See* Tex. Const. art. II, § 1. He stated that his oath of office to uphold the Constitution required him not to comply with Ch. 37. Complaint was filed with the State Commission on Judicial Conduct. After informal proceedings it concluded that he violated Canon 2A of the Code of Judicial Conduct and publicly admonished him. He appealed the ruling by trial de novo before a Special Court of Review. To dispose of this case, we are not required and do not determine whether Ch. 37 violates the separation-of-powers clause as the Judge maintains. We decide whether he violated the Code of Judicial Conduct or the Texas Constitution by issuing the standing order. We hold that he did not. We also hold that his failure to comply with Ch. 37 does not rise to the level of sanctionable misconduct. Finally, we determine whether, as the Commission alleges, “a demonstrable portion of his appointments were neither impartial nor based on merit.” It did not prove this charge by a preponderance of the evidence. We thus dismiss the charges without sanction. In this case the Commission focused only on the appointment of mediators, as do we. The statute requires courts to have a list of registered mediators. The court must appoint the mediator whose name appears first on the list, then move that mediator to the bottom, with exceptions, such as agreement of parties, or in a complex case the court may appoint one that has training, education, certification, skill, language proficiency, prior involvement with the subject or parties, or relevant geographic area. In the standing order he addressed a perceived conflict between his obligation to comply with Ch. 37 and his oath to uphold the Constitution. He concluded that under *Davis v. Tarrant Co.*, 565 F.3d 214 (5th Cir. 2009), the appointment of a mediator or ad litem is “an inherently judicial function” and “the Court must be free to exercise discretion in order to match the appropriate individual to a case to ensure the most efficacious handling of it.” Based on *Davis* he reasoned that the legislature “may not invade and usurp this ‘zone of judicial power’ under the guise of establishing administrative rules.” He concluded that Ch. 37 “is manifestly unconstitutional” in that it violates the Texas Constitution’s separation-of-powers clause, thus he had “no choice but to honor his oath of office to uphold the Constitution and not comply with Ch. 37 of the Government Code concerning appointment of ad litem and mediators.” In a long opinion that fleshed out the issues (I lifted large parts of this opinion directly into this summary with edits for brevity), the Court of Review found that his legal error **was not** 1) egregious; 2) part of a pattern or practice; 3) in bad faith; or, 4) persistent. Also, the decisions of the Judge were either reviewable on appeal or by mandamus. The Court concluded: “Having failed to find that he violated the Code of Judicial Conduct or the Texas Constitution, we reverse the Commission’s public admonition and dismiss the charges against him without sanction.”

Civil Litigation—Personal Injury/Electrocution—Jurisdiction of Public Utility Commission

In Re Oncor Electric Delivery Company LLC, Relator, 630 S.W.3d 40 (Tex. 2021). Defendant/Relator Oncor supplied electrical service to a home owned by Plaintiff Taylor. Taylor requested that Oncor trim branches that were growing over the electrical line that serviced his property. Oncor responded that the branches were his responsibility. Taylor attempted to trim the tree but while doing so he alleges that he contacted the high voltage wire and was injured. He sued Oncor for negligence, etc. Oncor filed a plea to the jurisdiction seeking abatement of the action to require him to first exhaust administrative remedies before the Public Utility Commission (PUC). This plea was denied by the trial court, denied on mandamus to the Court of Appeals, and came to the Supreme Court. Oncor claimed that it is the PUC that must first decide whether Oncor had a duty to trim the trees or relocate the drop line under the PUC’s authority. Taylor countered that common law tort claims for personal injury damages fall outside the PUC’s exclusive jurisdiction to regulate Oncor’s operations and services. The Supreme Court went through a long analysis that is worth a read before ultimately concluding: “The Legislature does not abrogate the common law in silence. The Public Utility Regulatory Act authorizes the Commission to form a “regulatory system” for utilities and their customers, not to adjudicate individual claims for physical harm that arise from a duty independent of utility regulation. Accordingly, the Commission lacks exclusive jurisdiction to decide Taylor’s claim. Because the trial court properly denied Oncor’s jurisdictional plea, we deny relief.”



Librarian Musings: CLE: Don't Think of it as a Drudgery!

By Jonathan Briggs

I needed a few hours of Continuing Legal Education (CLE) for my yearly requirement, so over the Thanksgiving holiday I watched videos of courses and read materials to fulfill the self-study portion. Like most attorneys I try to find CLE materials that are both interesting and relevant to my work so that I may grow in knowledge and keep current of issues and developments in the law and in legal practice. I thought I would briefly share some of these materials with you. I hope this is equally of interest to attorneys and our pro se patrons alike. Family law is a big part of what we assist patrons with at the Law Library and since becoming Assistant Law Librarian I now try to include this topic as part of my yearly CLE. I viewed some of the family law portions of the 2021 *Summer School: Sun, Sand, and CLE for the General Practitioner* CLE that was held in Galveston. I watched "2021 Changes to Discovery and the Impact on Family Cases", a topic that has equal applicability to attorneys and people handling their own cases. As you may recall, there were some major changes to **Required Disclosures under TRCP 194**, generally requiring parties in cases filed on or after January 1, 2021, to serve responses within 30 days of the filing of the answer/appearance by Defendant. First of all, if you haven't yet, get a cup of coffee and sit down and read the updated Rule in its entirety to get up to speed on the changes. One of the interesting things pointed out was 194.2(d) concerning the eight proceedings where parties are exempt from making these disclosures, including protective orders, CPS cases, Attorney General/child support cases, habeas corpus, etc. Also, under 194.2(c) it provides the parameters of disclosure (timeframes, etc.) as to certain items for cases such as divorce. The Rule also discusses instances that give the Courts some discretion in making orders regarding disclosures. Also mentioned was how the parties can agree to forego this requirement (such as in an agreed divorce). Another portion of the course concerned "Presumptions and Their Implications in Family Law Cases", a presumption being "simply a rule of law requiring the trier of fact to reach a particular conclusion in the absence of evidence to the contrary." *Temple Indep. Sch. Dist. v. English*, 896 S.W.2d 167, 169 (Tex. 1995). These presumptions are in the Family Code and/or the case law, such as the presumption "that the appointment of the parents of a child as joint managing conservators is in the best interest of the child." This presentation gave a thorough discussion of this area of family law. The final part of this seminar that I watched was "Basics of the Waiver Divorce" and it gave a good overview of what the attorney presenting it described as: "The waiver divorce is a common type of judicial proceeding in Texas. One party files for divorce, and gets a Decree ending the marriage, dissolving the community property and (if necessary) addressing child support visitation and conservatorship. Maybe the Decree is the product of an agreement between the parties, maybe the Respondent defaults, but a Decree is entered and a marriage ended." This is very often the scenario presented at the Law Library and we have the paperwork for this and other situations. I have a copy of each of the course materials for these three presentations in PDF and am glad to provide copies of them via e-mail or they may be printed here at the Law Library for 10 cents per page. I also viewed a presentation and panel discussion on ethics using the writings of Abraham Lincoln, who was a highly respected and skilled attorney long before he became President, entitled "Abraham Lincoln on Professionalism." It was a very worthwhile course and showed in some ways that not much has changed in some of the bedrock principles of the practice of law since the mid-1800s....his wisdom still applies today. I also viewed "Practical Technology for Your Solo or Small Firm" to get an update on some of the tools of the trade and "How Lawyers Can Recover from Survival Mode" which looked at the human side of the practice of law as attorneys have faced their own personal and professional challenges enduring Covid-19 (and its effects on life and work) and the deep freeze of February 2021. Finally, I read some 2021 law review articles for the self-study portion...one was an eye-opening look at termination of parental rights in Texas and nationally from *The Scholar: St. Mary's Law Review on Race and Social Justice*; another was from a recent edition of *St. Mary's Journal on Legal Malpractice & Ethics*, a fascinating article on the use of social media by lawyers and the ramifications thereof...a worthwhile read in this day and age. I always thought that CLEs in addition to giving you updates in your area of practice or educating you on an area of the law should also at least in some measure inspire you, refresh and recharge you, and renew your appreciation of and commitment to the profession. Try not to look at CLE as an obligation simply to be met to maintain your license, but as a chance to learn and reflect a bit. And besides, it's only 15 hours a year, right?!

