



LAW LIBRARY NEWS

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December 2022 ♦ Volume 30, Issue 10

Happy Holidays!



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New & Updated Resources

O'Connor's Texas Series

- *Employment Codes Plus*
- *Rules of Evidence Handbook*
- *2022 Editions*

Texas Guardianship Manual

- *2022 Edition*

Texas Practice Series

- *Medical Malpractice*
- *Methods of Practice*
- *2022 Edition*

US Master Tax Guide

- *2023 Edition*

Texas Probate System

- *2022 Edition*

Texas Rules of Form, Greenbook

- *2022 Edition*

Texas Drunk Driving Law

- *2022 Update*

Texas Practice Guide

- *Civil Pretrial*
- *2022 Edition*



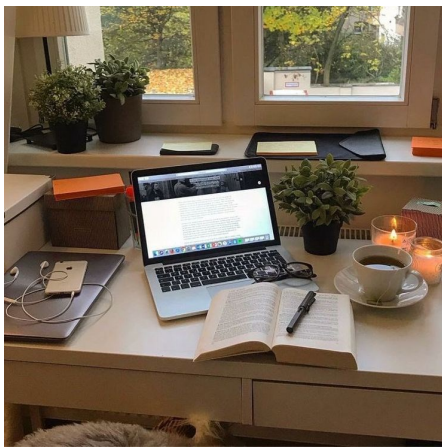
Librarian Musings: November... 'Tis the Season for CLE!

By Jonathan Briggs

Late November is always a nice time of year...the kindness of family, loved ones, and friends on my birthday and celebrating Thanksgiving over a nice long weekend. But along with the birthday cake and stuffing, I usually get a nice helping of CLE. It's the time of year where I look at my hours earned throughout the year and see how many more I need to finish up my annual requirement. So, for a few hours over the rest of the weekend, I settled in front of the computer with a cup of coffee as the rain came down outside and the shoppers were hitting the sales. In digestible portions, I look at conferences and continuing legal education and other professional development...I usually learn something I can apply to my work and I get reinvigorated about the law and my role as a law librarian for Fort Bend County. So, I wanted to share with you a couple of the courses I attended that were of particular benefit and interest.

Expunctions and Orders of Nondisclosure are topics of interest to many of our Law Library patrons, whether they are a criminal defense attorney or are now self-represented/pro-se following the disposition of their criminal case. Patrons often ask us for information and forms for this. For expunctions, I provide the statutes from the Texas Code of Criminal Procedure and information and forms from the *Texas Criminal Practice Guide*. For Orders of Nondisclosure, I refer them to the page from the Texas Courts webpage that has a "Nondisclosure Overview" along with various sets of information and forms, the applicability of which (if any) are determined by the facts and circumstances of their offense as provided by the Government Code. <http://txcourts.gov/rules-forms/orders-of-nondisclosure/>.

There is also a great benefit in hearing a real-world discussion of these issues. The one-and-a-half-hour presentation given by Andrea Westerfeld, an Assistant County & District Attorney for Ellis County, and Amy Murphy, an Assistant District Attorney of Collin County, provided a solid overview of these processes and some of the ins-and-outs that will aid anyone pursuing these post-disposition options. On my thumb drive, I have a pdf copy of their class PowerPoint entitled "Understanding Expunctions and Nondisclosures." If you would like a copy, please e-mail me at: jonathan.briggs@fortbend.lib.tx.us. Also, local attorney Annie Scott (author of *Still Human: Getting Past Your Criminal Charges*) gave an excellent presentation on these topics at the Law Library a couple of years ago, and it is available on our YouTube page: <https://bit.ly/YouTubeLawLibrary>. Expunctions and Nondisclosures are crucial to the people seeking them, and we do all we can to assist them in this endeavor.



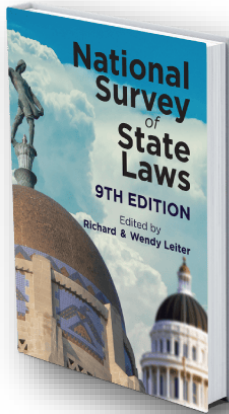
Mastering the rules of evidence is not something that happens overnight for trial lawyers. So, imagine being faced with an evidentiary hearing or trial as a pro se litigant. Pretty daunting. They run the risk of crucial evidence being excluded from their case. It is something I have tried to help these patrons with over the years. But how to effectively provide this information to a lay person in the short amount of time prior to their hearing or trial? This year's CLE at least gave me another tool to provide them to try and help them understand what they are dealing with and to put their best foot forward. The course dealt with electronic evidence, i.e., all that stuff in our phones and on our computers...which often makes up key evidence in any type of case. The course "Electronic Evidence Predicates" was presented by family law attorney Cindy Tisdale, who did an excellent job. Aside from providing a lot of information and nuts-and-bolts skills, she made an excellent point...even if you are a family law or general civil attorney, do not forget to also use evidentiary cases from the Texas Court of Criminal Appeals, whose precedence is just as binding on that nasty divorce as it is on that drug case. I have copies of the course paper and PowerPoint presentation, so please contact me at the e-mail above for a copy. If you are an attorney who needs a refresher on these skills, I'll be glad to provide the materials to you, as well!

I try to earn CLE throughout the year, but I always have a few hours left to complete. I'm kind of glad I do...it allows me to sit and focus on the materials and I end up getting a lot out of them that helps me in doing my job better and assisting our pro se and attorney patrons. **Happy Holidays** and **Merry Christmas** to you all!



Featured Resource: *National Survey of State Laws*, 9th Ed.

By Andrew Bennett



The Fort Bend County Willie Melton Law Library has added the new edition of *National Survey of State Laws*. This unique title, now in its 9th edition, focuses on comparing laws across all 50 states. It also shows them in unique tables so that you can see how each state compares in an easy and straightforward manner.

Topics tend to be some of the most commonly researched laws, such as Business and Consumer Laws, Criminal Laws, Education Laws, Family Law such as abortion or child custody, general civil laws like civil rights, medical records, privacy of library records, and more. This edition also includes various tax and real estate laws. New to this edition is beer law, voter laws, and unclaimed dead bodies.

The book is written by the husband-and-wife team of Richard and Wendy Leiter. Richard Leiter started publishing this book in 1993 as a general reference work with his experience as a reference librarian wanting to help those who wanted to compare laws across the 50 states. Many of the topics came from the questions he was asked when he was a librarian and have since expanded to include additional topics as the questions have now included other areas. Wendy Leiter has always been involved with the book since the beginning, assisting Richard with various computer software programs and giving her experience as a legal secretary and paralegal to the research of the various topics as well as understanding legal citation.

The book is available at the Law Library in print and online through HeinOnline. Copies of the book can be made for \$0.10 a page. For more information, contact the Law Library.

Technology Corner: Gale Legal Forms Library

By Christine France

Fort Bend County Libraries (FBCL) has several helpful databases available, and one of them is Gale Legal Forms. Gale offers an extensive collection of forms on many topics, such as deeds and estate planning.



Many of the deed forms available are fill-in-the-blank style and are specific to the number of Grantors and Grantees, which makes these forms easy to use. Gale also provides a great selection of wills and power of attorney forms, which are also fill-in-the-blank style. Many of the will forms are also specific, as to if you are single, married, have children (adult or minor), or no children, and they are easy for pro se patrons to draft themselves. Most of the will forms include helpful instructions and some are even available in Spanish.

If you are interested in checking out Gale Legal Forms, here is how to do so. Simply visit FBCL's website, www.fortbend.lib.tx.us, hover over the "Research" tab, and click on "Digital Resources and Databases." Then click on "By Subject," then select "Legal." Next, scroll down the page and select "View Resource" under "Legal Forms (Gale)." Enter your library card number and you can access these forms for free. If you do not have an FBCL library card, stop by one of our library locations and sign up for one.



Texas Case Law Update

Local Cases

- [In Re Johnae Vincent](#), No. 01-22-00828-CV (November 29, 2022): Pet. Writ Mand. Denied. (328th)
- [State of Texas v. Jessie J. White](#), No. 14-21-00664/00665-CR (December 6, 2022): Aff'd. TC Judgment. (240th)

Criminal Law—Ineffective Assistance of Counsel

A couple of recent opinions from Houston's 14th Court of Appeals dealt with the issue on ineffective assistance of counsel. In *The State of Texas v. Leonardo F. Garcia*, 651 S.W.3d 506 (Tex.App.-Houston [14th Dist.] 2022, pet. refused). In 2007, Defendant/Appellee (a non-citizen) was convicted of misdemeanor theft and had sought habeas relief, citing ineffective assistance of counsel based on his attorney's failure to advise him of the immigration consequences of his guilty plea. The trial court granted the habeas relief and vacated the conviction. The State appealed, which was dismissed for lack of jurisdiction. The Texas Court of Criminal Appeals granted the State's petition for discretionary review, and it reversed the Court of Appeals determination on lack of jurisdiction and remanded it to the Court of Appeals to consider the merits of the State's argument. This time around, the 14th Court of Appeals fully looked at the relevant case history. The defense counsel — due to the passage of time — could not recall the specific case or locate definitive paper records. He could only recall his standard procedure that he always employed in handling his cases which included immigration consequence admonishments when relevant. The Defendant's memory was spotty, but he claimed that he never heard anything about immigration. The 14th concluded that Defendant could not show that he received affirmative misadvice about his status and that — in applying the standard at the time prior to the Padilla case — defense counsel was not required to inform their clients of the immigration consequences of their plea. Reversed and rendered.

In *Daniel R. Dewitt v. The State of Texas*, 651 S.W.3d 669 (Tex.App.-Houston [14th Dist.] 2022, no pet. h.), the 14th dealt with a claim of ineffective assistance of counsel from the standpoint of claimed failures of the defense attorney at trial. Defendant/Appellant was convicted of aggravated robbery. Defendant argued that during the punishment phase, his attorney failed to lodge objections based on the Confrontation Clause. To prove ineffective counsel, it must be shown by a preponderance of the evidence that the representation was deficient in that it fell below the standard of prevailing professional norms and with a reasonable probability — but for this deficiency — the result of the trial would have been different. Further, the accused is entitled to reasonably effective representation, but that does not mean error-free representation. Finally, there is a strong presumption that the actions and decisions of trial counsel were reasonably professional and motivated by sound trial strategy. The Court of Appeals, in comparing the actions of counsel against these standards, concluded that Defendant failed to sufficiently prove that his attorney was ineffective. Affirmed.

Family Law—Protective Orders

Crystal Dolgener v. Steven Dolgener, 651 S.W.3d 242 Tex.App.-Houston [14th Dist.] 2021, no pet. h.) is a lengthy opinion that shows the inquiry on factual and legal sufficiency the courts must conduct in applying the law to the evidence to determine whether a protective order can be issued, and it is worth reading solely on this basis. Another interesting part of this opinion is the discussion on the issue of the motion to transfer filed by the wife. There was a divorce action going on in one district court, and the protective order issue was before another district court. She sought to transfer the protective order matter to the divorce court. Her request for a hearing on this was denied, and this was one of her issues on appeal. She brought up a good point in that the divorce court — in issuing temporary orders — and the court that issued the protective order had some contrary rulings. The Court of Appeals recognized that there is a potential for trouble here in that the law leaves the transfer of cases to the discretion of the court, but does not address the potential for conflicting rulings. What seemed most important to the Court of Appeals, in affirming the denial of a hearing on the Motion to Transfer, is their conclusion that trial court based its ruling on its judgment that the motivations of the mother in making allegations and accusations against the father were part of her "escalating attacks and threats against" him. Thus, the trial court's ruling was not unreasonable or arbitrary and thus within its discretion.

Juvenile Justice

In the Matter of T.V.T., 651 S.W.3d 1 Tex.App.-Houston [14th Dist.] 2021, pet. filed) is an appeal out of Harris County of the order of adjudication of Appellant juvenile for the aggravated sexual assault of a child under the age of 14. The Appellant was 13 years old at the time of the offense. Appellant had entered a true stipulation as to the charge after several pretrial motions were denied, the denial of which he now appeals. A key issue on appeal was the age of the juvenile offender, of which the Court wrote: "The supreme court determined that with the Legislature determining that children under 14 cannot consent to sex, the rationale then follows that the State may not adjudicate such a young offender for an offense that includes consent to sex as one of its essential elements. *Id.* at 824. Although *In re B.W.* involved the offense of prostitution rather than aggravated sexual assault, the holding in that case is implicated in this case because section 22.021 is central to the supreme court's holding that the Legislature did not intend to prosecute children under 14 years of age for offenses that include legal capacity to consent to sex." Under this rationale, the 14th reversed the order of adjudication and rendered judgment dismissing the case with prejudice.



Community News

- The **Fort Bend County Willie Melton 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 to the general public from 8 am to 6 pm. Go to their website here: <https://www.harriscountylawlibrary.org/>
- On **June 2, 2022**, the **Fort Bend County Willie Melton Law Library** returned to a **hybrid format for all of its classes**. This means all programs are offered online and in person.



FBC Bar News

Fort Bend County Bar Association

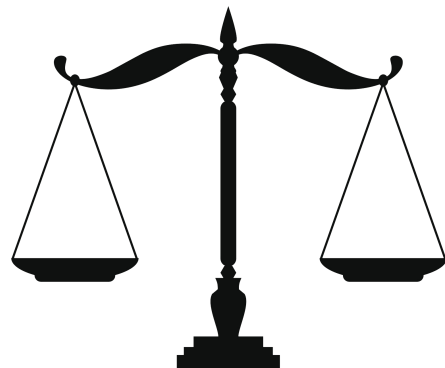
The Fort Bend County Bar Association is finished with their CLEs for 2022. Check their website or Facebook page for more details.

Family Bar of Fort Bend County

The Family Bar of Fort Bend County has their monthly meeting on the first Thursday of the month at Buena Vista restaurant. Entrance is free. Pay for your own meal. Check their website or Facebook page for details.

Fort Bend County Criminal Defense Attorneys Association

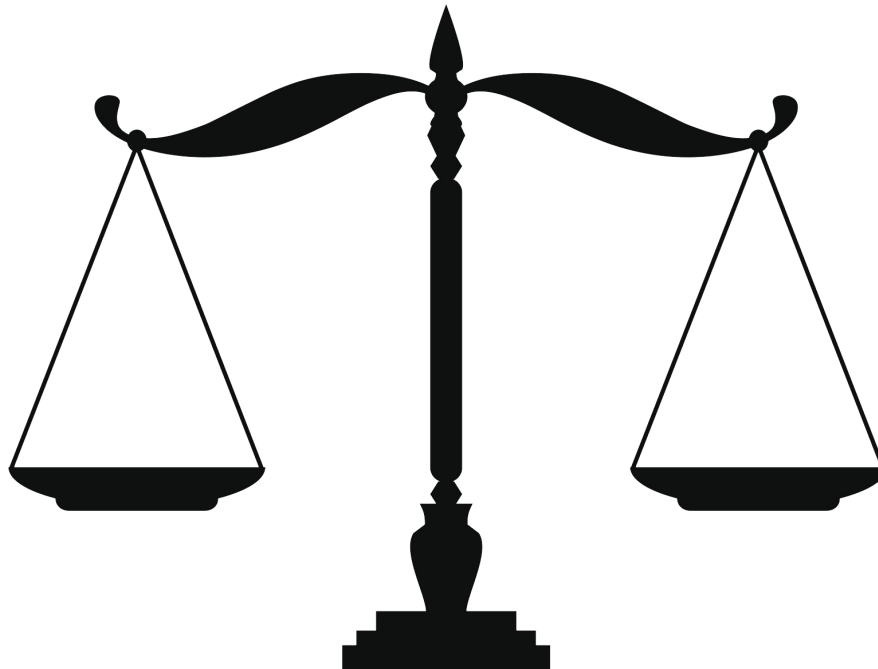
The Fort Bend County Criminal Defense Attorneys Association has their monthly meetings on the last Thursday of each month. Check their website or Facebook page for details.





Useful Articles and Links

- ***Work Smarter Not Harder.*** Ruby L. Powers. Texas Bar Journal. December 2022. [Texas Bar Journal Online.](#)
- ***Protecting the Public.*** Patricia Busa McConnico. Texas Bar Journal. December 2022. [Texas Bar Journal Online.](#)



Texas Lawyers Assistance Program

Through its [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.

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, with “Newsletter” as the subject, to llpublic@fortbend.lib.tx.us.

To unsubscribe, write “unsubscribe.”