



# Denton County Lawyer

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[www.dentonbar.com](http://www.dentonbar.com)

## Elsey & Elsey's Cameron Cox to Lead TYLA

*By Cameron Cox, Attorney at Law; [www.elseylaw.com](http://www.elseylaw.com).*

It was announced on February 2, 2012, that Cameron Cox of Elsey & Elsey was selected by his peers as Chairman-Elect for the Texas Young Lawyers Association (TYLA) for 2012 and 2013 and as Chairman for 2013 and 2014. This prestigious statewide position serves lawyers and citizens throughout Texas, as well as throughout the United States, offering topical projects and lectures.

For the past two years, Mr. Cox served as the District 11 Representative for the statewide Board of Directors of Texas Young Lawyers Association. In this capacity, he co-chaired the Local Affiliates Committee and was Vice Chair for the Community Education and On-Line Member Services Committees. In addition to co-authoring various articles and editorials for TYLA's eNews, Mr. Cox co-authored many articles in various publications, including, *The Little Voice: Recognizing Child Abuse & Your Duty to Report it; The Unconscious Truth: Civil and Criminal Consequences*

*of Underage Binge Drinking; and, Probate Passport: A Guide to Probate and Estate Planning in Texas.* Mr. Cox was a guest lecturer to a number of groups at the 2011 State Bar of Texas Bar Leaders Conference, Texas Lawyers for Texas Veterans Clinics throughout the state, Legal Aid of Northwest Texas, as well as the JAG corps at Fort Hood.

In addition to his statewide involvement, Mr. Cox has been very active in serving the greater Denton community as a "Pillar of Justice" with the United Way of Denton County, as Chairman of Leadership Denton, and in various leadership and volunteer roles for the Denton Chamber of Commerce, Children's Advocacy Center for Denton County, Nelson Children's Center, Denton ISD Adopt-A-School and Denton ISD Mentor Program. He is currently on the Executive Committee for and serves as the Vice-Chair of the Children's Advocacy Center for Denton County. Mr. Cox has been a member of the Greater Denton

County Young Lawyer's Association since 2007, where he currently serves on the Board. He is also a member of the Denton Bar Association and Dallas Bar Association.

Mr. Cox is excited to continue to serve the needs of the residents of Denton and the surrounding counties through his association with Elsey & Elsey. The firm's practice areas include complex civil litigation, business litigation and business law, family law, custody disputes, probate, estate planning, real estate law, personal injury, public condemnations and eminent domain, and oil and gas law.



*Cameron Cox, Attorney at Law; [www.elseylaw.com](http://www.elseylaw.com)*

### Texas Lawyers for Texas Veterans

**Equal Justice Volunteer  
Program presented by  
DCBA and Legal Aid of  
NorthWest Texas  
A Free Legal Clinic**

#### Date:

March 6, 2012  
5:00 PM – 7:00 PM

#### Location:

Texas Veterans Commission  
1300 Teasley Lane, Plains Suite

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# From the President

As we all are aware, 2012 is a Presidential election year, and March should bring about a primary election in Texas. March 6, 2012 was the original primary election date, but that date has been changed to April 3 because of redistricting in Texas as a result of the 2010 census. I realize that many of you in the Denton Bar are quite knowledgeable about the political process and the current status of the primary election, and, if so, you can stop reading now. However, if you are like me, you may be wondering how we got to the point of a rescheduled primary date, which, as of the deadline for publication of this Newsletter, may be delayed even further, and how the Courts are involved in the process.

The 2010 census showed a huge increase in the population of Texas, adding over four million new residents from the 2000 census. Each time we have a census the electoral district lines must be reviewed and redrawn as necessary to ensure that we are in compliance with the Constitutional one-person, one-vote rule. This time

Texas not only had to review the lines but also had to add four congressional districts for the new seats that we acquired. The 82nd Legislative for Texas convened in January 2011, and immediately set to work to redraw electoral district lines. As you can well imagine, this is quite a political and partisan process, but eventually four plans were passed during the Regular Session and one Called Session. (The Legislature passed a State Board of Education redistricting bill [H.B. 600 {Plan E120}], Senate redistricting bill S. B. 31 {Plan S148}, House redistricting bill, H B. 150 {Plan H283}, and the congressional redistricting bill, S.B. 4 {Plan C185}]. Before and during the legislative process resulting in passage of the plans, various lawsuits were filed in state courts and federal district courts around the State by minority groups alleging that the new lines were drawn with an illegal discriminatory purpose to dilute the minority vote. All the lawsuits were eventually consolidated in the San Antonio division of the U. S. District Court for the Western District.

Meanwhile, on July 19, 2011,



*Dena A. Reecer, President*

Texas Attorney Greg Abbott filed a declaratory judgment action in the U. S. District Court for the District of Columbia to obtain pre-clearance for the new plans as required by the Voting Rights Act of 1965. All changes that covered a jurisdiction's election procedures, including district lines, are suspended pending approval by a three-judge panel of the U.S. District Court for the District of Columbia or the U.S. Attorney General. Texas is a "covered jurisdiction" under the Voting Rights Act. The standard for pre-clearance is that the proposed change "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." Sec. 1973c(a). The pre-clearance process is ongoing and

*President's Letter continued on page 3.*

## **DCBA Officers**

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## **DCBA Sections**

- Trial Lawyer's Association
- Family Law Section
- Greater Denton County Young Lawyers Association
- Real Estate, Trust, and Probate Law Section
- Criminal Law

## **DCBA Membership**

**Your DCBA Membership includes**

- Free and discounted CLE programs
- Monthly luncheon & happy hour
- Networking opportunities
- Listing on the bar website, including photo, two practice areas, and a link to your website.

*For more information see our website: [www.dentonbar.com](http://www.dentonbar.com).*

## Marty Leewright Appointed to Supreme Court Task Force

*By Marty Leewright, MA, JD, Attorney and Mediator, Bob Leonard Law Group, PLLC; [www.bobleonard.com](http://www.bobleonard.com).*

**B**ob Leonard Law Group announced that attorney Marty B. Leewright, was appointed to a Supreme Court Task Force to advise the Supreme Court regarding rules to be adopted in Justice Courts and Small Claims Cases, including rules of civil procedure and eviction proceedings. Mr. Leewright is one of three lawyers appointed to the statewide Task Force and the other thirteen members are judges.

Small Claims Courts will be abolished in Texas effective May 1, 2013, which calls for new rules for Justice Courts to be promulgated no later than that date. The Supreme Court Task Force has been directed

to make final recommendations to the Supreme Court later this year.

A 25-year attorney, Mr. Leewright currently practices civil trial law, highly contested divorce and custody litigation, and landlord-tenant appeals. For a decade, Leewright served as Legal Advisor for Students at the University of North Texas, where he tried many cases in Justice Courts. He went on to try numerous trials in County, District, and Federal Courts in Texas. Marty is also an experienced mediator who has received awards for service and bar leadership. He is a member of both the Tarrant and Denton County Bar Associations.

“The Supreme Court Task Force’s

work will affect how tens of thousands of Texans file claims and how attorneys handle cases in 820 Texas Justice Courts, for many years. Mr. Leewright has the experience

and knowledge to serve and contribute greatly,” said the Hon. Bob Leonard, a five-term Texas Legislator.



*Marty M. Leewright*

*President's Letter continued from page 2.* no decision has yet been made on the constitutionality of the new plans.

Back in Texas, the Western District Court began hearings on the plaintiffs' claims, and it became clear that the new plans would not receive pre-clearance in time for the 2012 elections. Thus, the Western District Court issued an order on December 16, 2011 to set a new primary date of April 3, 2012 among other dates for the electoral process in Texas. The Court also undertook the task to devise interim plans since the old district lines could no longer be used. The Court did so and issued interim plans, but the State of Texas asked the Court to stay implementation of the interim plans pending an appeal to the

U.S. Supreme Court. The Supreme Court issued a Per Curiam opinion on January 20, 2012, vacating the order implementing the new maps, and ordering the Western District Court to draw interim maps consistent with the opinion. The Supreme Court ruled that the Western District Court must take guidance from the State's issued plans pending pre-clearance in devising the interim plans as the issued plans reflect the policy and will of Texas' citizens. The Supreme Court found that the Western District Court failed to take into account the plans that has previously been issued by the 82nd Legislature. On January 28, 2012, the Western District Court ordered the parties who wished to preserve an April primary to submit agreed-upon

interim maps by February 6, 2012. As of this publication deadline, the parties have been unable to reach a resolution and the Western District Court has indicated that additional delays appear inevitable.

As I read some of the Courts' opinions in preparing for this edition of the Newsletter, I was reminded of the truly brilliant system of government that we have in the United States; that we are a country of laws and judicial redress, that every person has the right to vote, that our courts protect that right, and that we, as lawyers, are part of something bigger than ourselves.

Have a good March and we will see you at the polls in April (I hope!).

## When You Need to Think Like a Civil Litigator

By Jeffrey A. Hines, Attorney at Law, P.C.

Your client comes into your office with a tale of woe about the children of the marriage that doesn't meet the requirements for issuance of a Protective Order under Title IV, but does merit an ex parte TRO to immediately prevent the other parent from having any contact with the children until a hearing can be had. What to do? What relief does the Family Code provide to address this emergency? To answer this query, you need to put on your Civil Litigator Hat and look outside the Texas Family Code for some of your guidance.

Refer to §105.001(c), Texas Family Code, which provides as follows:

- (c) Except on a verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure, an order may not be rendered:
  - (1) attaching the body of the child;
  - (2) taking the child into the possession of the court or of a person designated by the court; or
  - (3) excluding a parent from possession of or access to a child.

What does "in accordance with the Texas Rules of Civil Procedure" mean? For the answer, look at Rule 680, TRCP, which states, in part:

### To Get Extraordinary Relief in SAPCR Suits

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by

affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. (Emphasis added).

What does the term "affidavit" mean? For this, we look to the recently amended Texas Civil Practice and Remedies Code §132.001 (CPRC), which became effective September 1, 2011:

### § 132.001. Unsworn Declaration.

- (a) Except as provided by Sub-Section (b), an unsworn declaration may be used in lieu of a written sworn declaration, verification, certification, oath, or affidavit required by statute or required by a rule, order, or requirement adopted as provided by law.
- (b) This section does not apply to an oath of office or an oath to be taken before a specified official other than a notary public.
- (c) An unsworn declaration made under this section must be:
  - (1) in writing; and
  - (2) subscribed by the person making the declaration as true under penalty of perjury.

Sub-Section (d) of this provision sets out a form to use to comply with the new rule.

These provisions lay out the basic ground rules for crafting your pleadings and attached proof to obtain this type of emergency relief in a SAPCR, non-Protective Order situation. But there are more things

to look at under Rule 680 that must appear in the TRO itself. Following the above-quoted portion are these additional requirements:

Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after signing, not to exceed fourteen days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall appear of record. No more than one extension may be granted unless subsequent extensions are unopposed. In case a temporary restraining order is granted without notice, the application for a temporary injunction shall be set down for hearing at the earliest possible date and takes precedence of all other matters except older matters of the same character; and when the application comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a temporary injunction and, if he does not do so, the court shall



dissolve the temporary restraining order. On two days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require. (Emphasis added).

Every restraining order shall include an order setting a certain date for hearing on the temporary or permanent injunction sought.

Courts require that all of these requirements be strictly construed and followed. In *Dohrn v. Delgado*, 941 S.W.2d 244, 249 (Tex. App. - Corpus Christi 1996, no writ), a mandamus action, the 13th Court of Appeals ruled that the trial court abused its discretion in granting a temporary restraining order which effectively granted temporary custody of the appellant father's children to their maternal grandfather (Persyn) after the mother's death. While Persyn attached an affidavit to his request for a TRO, and used the "magic words" of §102.003 Texas Family Code Annotated (Vernon 1996) ("placing the children with Dohrn would 'place the children in an environment that may endanger their physical health and significantly impair their emotion [sic] development'"), its factual content made only vague allegations of Dohrn's financial instability and dishonesty regarding property and financial obligations. The Court ruled these were insufficient to show any immediate and irreparable injury, loss, or damage sufficient to justify the court's ex parte TRO depriving Dohrn of the possession of his children, citing Rule 680, TRCP, and granted the

mandamus relief. The opinion further stated:

Significantly absent from the present petition and affidavit are any allegations of specific and tangible injury or harm to which the children would be subjected if left in Dohrn's custody pending an evidentiary hearing on Persyn's action in the trial court. Accordingly, we hold that the trial court abused its discretion in issuing the present TRO.

Experience has shown that unless your affidavit shows very specific, significant, serious facts, you are not going to get a TRO granting extraordinary relief, but you may get an accelerated hearing date instead; if you're lucky. You want to make sure to not only parrot the language of the above rules in your pleadings and affidavits, but also set out the sworn facts that will lead the court to the conclusions you seek. Be especially mindful of the need to show immediacy, i.e., why you need this relief today before notice can be given and a hearing held. Both prongs of the rules' requirements must be satisfied and specifically set out in your affidavits.

After you get the Judge convinced the TRO should be granted without notice, make sure the TRO itself contains all of the findings of fact required by Rule 680, is dated and timed as to when signed by the Judge, and is filed with the Clerk. Also, make sure the order signed by the Judge sets the application for a temporary injunction hearing on a timely basis, stating the date and time for same (FIAT) and that the FIAT is also signed by the Judge, Clerk, or Court Coordinator.

Some courts have Local Rules which require certification in your pleadings that you contacted or



attempted to contact your opponent or opposing counsel before presenting a request for ex parte relief to the Judge. You must comply strictly with such Rules and make sure your pleadings reflect you have done so.

If you are the opponent, use every opportunity to point out where the pleadings, affidavits, or TRO deviate from these Rules and use those as the bases for a Motion to Dissolve the TRO, alleging that strict compliance has not occurred or that there is no immediate need for an ex parte order. The proponent is requesting "extraordinary relief," so he or she should be held to the highest standards for compliance in order to prevail.

There is one more thing of which to be aware. At the hearing on your application for Temporary Injunction (TI), make sure you comply with Rules 682 and 683, TRCP. Specifically, make sure the TI Order complies with Rule 683 as to findings of fact, and contains a hearing date for final trial.

So, if you have a serious fact situation and can convince the Judge to grant your request for immediate extraordinary relief and sign your TRO, don't risk having your request denied due to a procedural failure. Know these Rules and follow them faithfully. And expect the other side to point out when you haven't done so.

## 3D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals

By Mike Gregory; [www.dentonfamilylaw.com](http://www.dentonfamilylaw.com).

In the summer of 2009, I, along with three other Denton lawyers (called by our teachers and fellow students “the Texas Mafia”), attended the course “Deal Design and Implementation” at the Harvard Negotiation Institute, also known as the Project on Negotiation. Many people have heard of the book, *Getting to Yes*, which was also written by Harvard professors. It introduced the concept of “win-win” negotiations. Everyone in the negotiation business is now familiar with their famous metaphor, the story of the Orange, which illustrated that if you asked the right questions, you could effectively meet all the parties’ interests by “expanding the pie.” One of our professors at the institute was David A. Lax. He, along with James K. Sebenius, a professor at the Harvard Business School and his partner in Lax Sebenius, LLC, a negotiation strategy firm with internationally

known clients, wrote, *3D Negotiation: Powerful Tools to Change the Game in Your Most Important Deals*. This book has taken the *Getting to Yes* concepts to a new and advanced level of sophistication. Lax says that most negotiators focus on the face-to-face process at the negotiating table. However, they say the negotiators’ usual persuasive tactics are only the first dimension in negotiation. They explain that there are two other dimensions in negotiation that can make all the difference in negotiating a successful deal. They call the second dimension, “deal design.”

Lax says that “...3D negotiators know how to unlock economic and non-economic value by systematically envisioning and creatively structuring agreements.” The authors contend that the third dimension is the real key to outstanding negotiation success. This third dimension, which they call the “setup,” is pivotal because

it includes the negotiators’ preparation prior to the actual negotiation, including making sure that “the right parties have been approached in the right sequence, to deal with the right issues, engaging the right set of interests, at the right table or tables, at the right time, under the right expectations, and facing the right no-deal options (and the consequences of walking away).” In the end, through their illustrations of their personal experiences from international negotiations to Wall Street deals, Lax and Sebenius help us take that once groundbreaking theory of interest-based negotiation and give it the depth to enable us to succeed in our negotiations on a level and with the consistency that we have not previously known. I highly recommend *3D Negotiation* as it will make you a better lawyer and negotiator when seriously studied.



### Save the Date Children and Family Law Ad Litem Seminar Sponsored by CASA

**Date:** April 13, 2012  
9:00 AM – 4:00 PM  
**Location:** Oakmont Country Club  
1902 Oakmont Drive, Corinth

#### **Registration:**

For more information and to register for the Children and Family Law Ad Litem Seminar contact Debbie Martin at CASA at 940-243-2272.

### I've Moved

#### **Law Office of Janette L. Baldwin**

401 E. Corporate Drive  
Suite 200  
Lewisville, TX. 75057

Phone: 972-436-8000  
Fax: 972-436-8801



# Bench/Bar III and Sponsors



PIRATES *of the* CARIBBEAN  
BENCH/BAR III

## BENCH/BAR III

### DATES:

May 18–20, 2012

### LOCATION:

Tanglewood Resort  
Pottsboro, Texas

### DETAILS:

Come join us for Pirates of the Caribbean on Sundance Isle, The Search for the Lost Fountain of Law. Register online at [www.dentonbar.com](http://www.dentonbar.com).

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# Announcements and Events

## DCBA in 2011-12

### March Bar Luncheon

**Date:**

Friday, March 2, Noon  
Meal included

**Location:**

Oakmont Country Club  
1901 Oakmont Drive  
Corinth, Texas 76210

**Program:**

*When Employers Fire, Then Call Me*

**Speaker:**

David Fielding

### April Bar Luncheon

**Date:**

Friday, April 13, Noon  
Meal included

**Location:**

Oakmont Country Club  
1901 Oakmont Drive  
Corinth, Texas 76210

**Program:**

*Legislative Updates Affecting Child Advocates*

**Speaker:**

Jane Burstain from the Center for Public Policy

### Announcing

DCAP will now be charging for DCAP Mediation re-schedulings or cancellations that fall within 10 days of the scheduled date of mediation, starting immediately.

### Condolences

DCBA would like to express our condolences to Thad Finley and family, on the passing of his wife, Jackie Finley, on February 11, 2012.

DCBA would like to express our condolences to Duane L. Coker and family, on the passing of his Grandfather, B. R. McMillan, on February 17, 2012.

## Monthly Meetings

### Collaborative Professionals

DCCP will meet at **12:00 PM** on Tuesday, **March 6**, at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

### Family Law

Family Law will meet at **12:00 PM** on Thursday, **March 15**, in the Central Jury Room, 1450 E. McKinney St. in Denton.

### Paralegals

DCPA will meet at **12:00 PM** on Thursday, **March 22**, at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

### GDCYLA

GDCYLA will gather for their monthly:

- Meeting at **11:45 AM** on Thursday, **March 1**, at Greenhouse, 600 N. Locust St., in Denton.
- Happy Hour at **5:00 PM** on Thursday, **March 8**, location to be determined in Denton.

### REPTL

REPTL will not meet in **March**, regularly scheduled meetings will resume on Wednesday, April 25.