



DCBA Recognized with Stars of Bars Awards for 2012-13

We are proud to announce that the DCBA won three Stars of Bars awards in this year's Texas Stars of Bar Award competition. The Stars of Bar Awards are presented yearly by the State Bar of Texas to recognize local bar associations for outstanding community involvement, commitment to increasing access to justice, and dedication to the profession. The awards include the Award of Merit, Star of Achievement, Outstanding Partnership Award, Publication Awards, and Judge Sam Williams Award; with judging conducted by the Local Bar Services Committee.

DCBA submitted eleven entries, one for each category offered, as we did accomplish a lot last year! Our winning entries were all in the Publication Awards categories, which honors one bar per division in each category for exceptional reporting during the May 1, 2012 – April 30, 2013 bar year. These awards recognize a noteworthy article or series of articles covering a legal topic graded by quality of writing, conciseness, strength of connection of articles, relativity to news and timeliness, interest to intended audience, and impact on understanding of legal topic.

We were honored to receive the following publication awards:

Best Series of Articles— Substantive Law



Congratulations to Aaron Robb on his Supervised Visitation series.

This substantive series regarding supervised visitation was written by Aaron Robb, M.Ed., NCC, LPC-S, Forensic Counseling Services. These stories ran in the July/August and September 2012 newsletters and explained the ins and outs of supervised visitation, including what supervised visitation really means, what is needed with supervised visitation, and how to be proactive with supervised visitation.

DCBA congratulates Mr. Robb for his well-written series, and hopes to enjoy more of his work. You can learn more information about his practice at www.texas counseling.org.

Best Feature Story



Congratulations to Duane L. Coker on his Avoid the Drama Triangle feature story.

The Best Feature Story award goes to a President's Letter written by our past President, Duane L. Coker. For the February 2013 newsletter, Mr. Coker wrote an article about how to "Avoid the Drama Triangle" with clients. In his article, he outlined exactly what this drama triangle with attorneys and clients entails, how easy it is to fall into it, and how to avoid it as well as escape from it.

This is definitely an article that both young and veteran attorneys can learn

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From the President

Last month I started my column with a special focus on the Texas Lawyer's Creed, and I hope to continue that focus throughout the year. "For no other reason than it is right" is the simple reason we choose to honor the Creed. But doing what is right is not always easy, and the Creed recognizes this. Section Two speaks to how attorneys should treat clients and what approach is right. We are called to have strong wills, strong backs, and be relentless regardless of what light it sheds on us. Our clients depend on our tenacity.

Ponder the following from Section Two:

II. Lawyer to Client

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

Of course, the key is in the balance of employing what are appropriate means. Apparently, something appropriate to one attorney may be inappropriate to another. Hence, I suppose it is the not so rare possibility that one attorney's method of advancing his client's interests is offensive to another, even though he doesn't believe or intend for it to be offensive. But is it then appropriate for the offended

attorney to respond with an equally inappropriate tactic? Where does it stop? Has the attorney now forgotten about representing the client's legitimate rights, claims, and objectives?



Theodore D. Ogilvie, President

The attorney does not owe the client a duty to win at all costs. Sure the duty is high and selfless, but that is no license for employing inappropriate means. The bullet points under Section Two are clear that the attorney is no court jester. The attorney must maintain professionalism at all times, regardless of the wishes and desires of the client. I will be discussing more of those points next month.

President's Kickoff Party

Return to Class. Please come to this great member benefit—a night of fun and fancy for our learned professionals. Mark June 28, 2013 at 7:00 p.m. for drinks, dinner, and dessert on your calendar. The venue is the beautiful Ashton Gardens in Corinth (just off Post Oak at the main entrance of Oakmont). You won't be disappointed! This is FREE for current members! And just \$25 for your non-member guest. This is in place of our June luncheon, and it will be a stellar event. We're going to party, "For no other reason than it's our night, and it's right!"

DCBA Officers

President, Theodore D. Ogilvie
Immediate Past President,
Duane L. Coker
President-Elect, Amie Peace
Vice President, Travis Biggs
Treasurer, Vicki Isaacks
Secretary, Andrew M. Lloyd
CLE Director, Victor Rivera

DCBA Directors

Phillip Herr, Fon Laughlin, Julia Kerestine, Virginia Moore, Jill O'Connell, Brian K. Tackett

DCBA Committee Chairs

Adoption Day, Victor Rivera
Awards, Theodore D. Ogilvie
Bench Bar, Kimberly Killebrew
CLE, Victor Rivera
Courts/Local Rules, Travis Biggs,
Fee Arbitration: Fon Laughlin
Library Board of Governors,
Phillip Herr
Membership/Social, Victor Rivera, Brian Tackett
Mentoring/Transition, Virginia Moore, Dena A. Reecer

Newsletter/Communications,
Phillip Herr, Jill O'Connell
Planning, Amie Peace
Pro Bono, Julia Kerestine

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.

Stars continued from page 1.

from, and the State Bar obviously felt the same. The DCBA congratulates Mr. Coker for this excellent article. You can find out more about his practice at www.cokerlegal.com.

Best Overall Newsletter



Congratulations to the 2012-2013 Communications Committee, Denton County Bar Association Board of Directors, Erin Manley, and all our newsletter contributors for their efforts in creating this outstanding publication.

With this entry, DCBA submitted all of our newsletters we published from May 2012 through April 2013 under one cover sheet with no essay to explain why this newsletter is the best in Texas. We could not have won this award without the contributions of all of our writers and Content Solutions for editing the articles and creating the newsletter layouts. The DCBA thanks and congratulates each and every one of you who helped with the newsletter in any way, no matter how large or how small you think your contribution was.

DCBA will be recognized for these awards at the Bar Leaders Luncheon on June 20th during the State Bar of Texas Annual Meeting at the Hilton Anatole in Dallas. Special thanks to the award winners for all their hard work. Without their help, this state-wide recognition would not have been possible. Thank you also to Erin Manley, who has provided the energy and guidance needed as soon as she came on board.

Return to Class

Save the Date for a
Fun & Fancy
Kickoff Party

Friday, June 28, 2013

Cocktails at 7:00 pm

Dinner at 7:30 pm

Ashton Gardens
Corinth

RSVP by June 24

invites to be sent soon

Members FREE

Guests \$25

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Mentoring Program

Transitions to Practice Inaugural Year a Success

By Virginia A. Moore, Law Offices of Virginia A. Moore, www.vamlawfirm.com.

MENTOR: A coach, guide, tutor, facilitator, counselor, and advisor.

More specifically, a “Transitions” mentor is someone who contributes personal time and energy to another by:

- Serving as an honest and transparent resource, willing to listen and share their insight and experience;
- Providing an introduction to the local community of lawyers and judges;
- Sharing anecdotal stories of their own mistakes and successes;
- Providing practical advice on starting and growing a fledgling law practice;
- Teaching, challenging, and encouraging high standards and accountability; and
- Developing a special relationship with and vested interest in the success of another.

The Board of Directors of the Denton County Bar Association committed to starting a Transitions to Practice Mentoring Program in the spring of 2012. By September 2012, a total of 28 mentors and mentees representing all areas of practice had been recruited for an orientation session, thereby officially kicking off the program in Denton County.

Mentees were given the opportunity to ask what types of experiences

would be helpful to them as they were beginning or transitioning their practices to Denton County. Based on their input, monthly meetings featured speakers on the following topics:

- *Ethics and Malpractice Traps*, Virginia Hammerle
- *Finding and Keeping Good Clients*, Bill Wood
- *Resources for New Lawyers*, Virginia Moore
- *Business Planning—Why and How*, Philip Mack Furlow
- *Disaster Planning*, Ruth Brock
- *Officing Alternatives*, Danny Boon
- *Professional Responsibility*, Jett Hanna

Denton County Judge Bonnie Robison and Probate and District Judge Bruce McFarling also opened their courts to the group. Dena Reecer collaborated with Judge Robison to introduce Denton County’s Statutory Probate Court, its staff, rules, and practice pointers.

Scott Alagood worked with Judge McFarling for a similar session in the 362nd Judicial District Court, where the Judge and his staff provided an in-depth look at the *Do’s and Don’ts of Trial Advocacy*. Former Assistant DA Lee Ann Breeding added key information from her experiences before the bench, and Gary Kollmeier also offered insight from his years

as a Denton County family law practitioner.

We also had the following additional highlights of the season:

- Dick Kelsey offered the mentees a Saturday work session at his office on how to litigate a probate matter from start to finish, a hands-on experience all the mentees raved about, and which, given the detail shared, could have been the basis of an entire mentoring course by itself.
- A unique probate case study was offered involving actual cases and clients. Thanks to facilitator Dena Reecer, the participants, and Judge Bonnie Robison, the mentees were offered the opportunity to walk through the actual facts of a complex situation involving two decedents passing away within a short time frame of each other and the decision making process between Muniment of Title and Independent Administration as appropriate choices. The mentees attended the actual probate hearing and received input from Judge Robison, court staff, and Ms. Reecer.

Throughout the year, mentors Travis Biggs, Mike Gregory, Brent Hill, Fon Laughlin, and Erik Nelson shared their lessons learned with their mentees as

Transitions to Practice Mentoring Group inaugural members enjoyed an excellent year of programming and mentoring. Shown left to right: Erik Nelson, Scott Bodkin, Amanda Dickson, Steve Wilson, Judge Bonnie Robison, Virginia Moore, Dena Reecer, Rick Cook, Judge David Jahn, and Dawnelle Thompson.

Mentoring Program

well as through general discussions at the meetings and the courtroom experiences.

Participating mentees for the inaugural year included:

- Scott Bodkin
- Chrysandra S. Bowen
- Rick Cook
- Amanda Dickson
- Christopher Hamm
- Bonny Haynes
- Joshua J. Kowert
- Marci B. Martinez
- Thomas C. Stephenson
- Dawnelle Thompson
- Robert Torrey
- Adam R. Whitten
- Robert “Steve” Wilson
- Sharon Wilson

The inaugural year’s wrap-up meeting featured various Denton County attorneys discussing the benefits and how-tos of becoming Board Certified under rules of the Texas Board of

Legal Specialization, the value in serving in local leadership roles in the Denton County Bar Association and the State Bar of Texas, as well as the benefits of participating in Leadership Programs offered by the SBOT and local Chambers of Commerce. Avenues for civic volunteerism and leadership were also addressed.

Mentees and mentors alike have commented on the value of the program and the experience offered. Mentees have been grateful for the opportunities to gain practical experience from such well respected mentor attorneys. Mentors have enjoyed developing personal one-on-one relationships and the opportunity to share their experience and guidance with the mentees.

Dick Kelsey summed up the feelings of all the mentors when he shared his personal belief that love of the law and service to the community are the best rewards of being a lawyer, noting

that personal accolades and financial success lag well behind as effective long-term motivators of excellence.

The Transitions to Practice Program in Denton County will be recruiting for its second season over the summer months. Discussions are underway to offer specialized tracks to assist those wanting to serve on various judicial appointments lists. Local judges are considering new requirements for such lists for attorneys new to Denton County, one of which may be having a mentor relationship with an experienced attorney.

If you are interested in participating as either a mentor or mentee, please email Virginia Moore at vam@vamlawfirm.com or Dena Reecer at dreecer@sheltonreecer.com for sign-up materials. We will also make announcements in the DCBA Newsletter and at the summer DCBA monthly meetings.



Getting it Right—A Guide to Environmental Due Diligence

By Cindy Bishop, C Bishop Law PC, www.cbishoplaw.com.

Before purchasing (and sometimes leasing) property, a buyer should ALWAYS conduct environmental due diligence. Not only does proper due diligence provide defenses against claims if contamination is found, it protects the buyer's investment.

The concept of environmental due diligence originated in the 1980s, and many buyers have gotten complacent—choosing to rely on existing environmental reports or opting for the lowest bidder approach. The phrase *you get what you pay for* rings very true in this situation.

This article reminds us why we do environmental due diligence, how it should be done to maximize its benefit, and what can go wrong when it is not done properly.

Why Environmental Due Diligence?

Due diligence was a product of the Love Canal disaster that occurred in the late 1970s. Hooker Chemical (now Occidental Petroleum Corporation) sold a site they had used to bury 21,000 tons of toxic waste to the Niagara Falls School Board for \$1, with a deed explicitly detailing the presence of waste and including a liability limitation clause about the contamination. Despite this disclosure, homes were built on a former toxic waste dump without any investigation into the historical land use. Construction efforts in conjunction with particularly heavy rainstorms

reportedly released the chemical waste and led to a public health emergency and an urban planning scandal. Hooker Chemical was found to be negligent in its disposal of waste but not reckless in the sale of the land.

As a result of Love Canal, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980, which imposed environmental liability on not only the entity that caused the contamination, but also everyone in the chain of title, regardless of fault. 42 U.S.C. §§9601–9675.

Over the years, CERCLA softened some to promote the sale of contaminated property, and the due diligence process was born. In 1986, CERCLA added the Innocent Purchaser defense against environmental liability if the purchaser conducted adequate inquiry to identify environmental hazards before purchasing the property. Environmental due diligence reports (typically the Phase I Environmental Site Assessment) were born. This defense, however, created the need for an industry standard for conducting environmental due diligence. In 1997, ASTM International, formerly known as the American Society for Testing and Materials (ASTM) created standard E 1527, which outlines the protocol for environmental site assessments.

In 2002, CERCLA added additional defenses for Bona Fide Purchasers and Adjacent Landowners. 42 U.S.C. §9601(35). But all of these defenses still center on the need for proper due diligence. The effect of proper due diligence allows a purchaser or adjacent landowner to assert a defense against claims for environmental contamination if the appropriate due diligence was conducted.

What is Adequate Environmental Due Diligence?

Adequate environmental due diligence complies with the current ASTM E 1527 standard and includes several historical, physical, and anecdotal research components, including:

- Historical environmental record search (databases, aerial photos, Sanborn maps);
- Physical property inspection; and
- Interviews with the current owner and neighbors.

A common misconception is that a Phase I report includes sampling. Sampling (e.g., soil, groundwater, asbestos) is not required in a Phase I report. If the Phase I study concludes that there may be environmental concerns, then the buyer typically conducts a Phase II study, which includes sampling of the potential problem areas to determine whether a problem actually exists.

The Phase I study must be completed by a qualified environmental

professional who has experience in conducting Phase I reports. And, in order to comply with the CERCLA due diligence requirements (known as All Appropriate Inquiry), the report **must** contain the following language, signed by the environmental professional who prepared the report:

"[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part." "[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312."

What is not Adequate Environmental Due Diligence?

Problems occur in a Phase I study in several areas, including:

- Failure to include the required language and signature referenced above.
- Relying on an old report. According to the ASTM standard, a report that is more than six months old is outdated. Old reports should be updated or redone.

How Can You Protect Your Client and Ensure Proper Due Diligence?

The tips set out below help ensure that your client gets the most protection from its due diligence efforts.

- **Require the consultant to**

follow the current ASTM E 1527 standard. Don't let the consultant's scope of work include words like *general compliance with* or *substantially in compliance with*. The consultant needs to represent that the Phase I study will comply with ASTM E 1527 without exception. ASTM plans to issue a revised standard in May 2013, so the consultant should be familiar with the changes.

- **Read the consultant contract carefully.** Many consultant contracts will try to limit liability to the amount of the project. So, liability may be limited to a few thousand dollars. In addition, ensure that the consultant has sufficient liability insurance and will maintain that insurance throughout the project term (which may include a Phase II).
- **Do not rely on someone else's Phase I report.** The best way for the client to protect itself is to have it hire its own consultant to have the Phase I completed. This direct relationship allows the client to control the project and negotiate the contract terms. Then, if something is missed or goes wrong, the client may have a claim for breach of contract (which can include recovering legal fees) as well as a claim for negligence/malpractice. If the client wants to accept the seller's Phase I report, obtain a reliance letter from the consultant that will allow the client to rely on that report. Otherwise, there is no privity between the consultant and client, and the client may not have an action against the consultant if something is missed.
- **Do not read just the executive summary.** Phase I reports are



Protest about the Love Canal Contamination by a resident, ca. 1978. Photo courtesy of the Environmental Protection Agency.

often churned out by consultants for little or no profit, with the hope that the work will lead to a Phase II study. Mistakes happen, and issues are overlooked. So, it's important to thoroughly review the Phase I report, including the appendices. Yes, the consultant has liability insurance, but the consultant may not be around when the client discovers it has actually bought the next Love Canal, despite receiving a clean bill of health from the Phase I. Minimize headaches (and litigation expenses) by reviewing the Phase I thoroughly before you close.

Do not ignore proper environmental due diligence. It deserves respect and more than just selecting the low bidder and putting the report in the file. Otherwise, your deal may become the next Love Canal.

Announcements & Events

June President's Kickoff Party

Date:

Friday, June 28, 7:00 p.m.

Location:

Ashton Gardens, Corinth

Program:

A Return to Class

Like our Facebook Page, join our Facebook group, and check your inbox for details about the President's Kickoff Party as they become available.

July Bar Luncheon

Date:

Friday, July 12

Location:

Oakmont Country Club

Program:

New electronic filing procedures adopted by the Texas Courts

Speakers:

TEXFILE representative

CLE: Course Number: 901268792,

0.75 hours



STATE BAR OF TEXAS ANNUAL MEETING
DALLAS, JUNE 20-21, 2013

Registration includes breakfast and lunch both days, a flash drive with all Annual Meeting materials and two quality days of CLE.

Register Online or download the full Course Brochure.

Rooms at the Hilton Anatole located at 2201 North Stemmons Freeway in Dallas have been blocked at special rates on a space available basis until **May 22**. Make a reservation online or contact the hotel and indicate you will be attending the State Bar of Texas Annual Meeting.

Monthly Meetings

Collaborative Professionals

DCCP will meet at **12:00 PM** on Tuesday, **June 4**, at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

Family Law

The Family Law Section will meet at **12:00 PM** on Thursday, **June 20**, in the Central Jury Room, 1450 E. McKinney St. in Denton.

Paralegals

DCPA will meet at **12:00 PM** on Thursday, **June 27**, at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

DCYLA

DCYLA will gather for their monthly meetings on the first Thursday of each month. Contact Jill Jester at jjester@minorandjester.com for meeting times and location.

REPTL

The REPTL Section will meet at **12:00 PM** on Wednesday, **June 26**, at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

Denton County Bar Association

2013-14 Membership Application

Required Information (for directory, membership, and website use)

Name: _____ Texas Bar Number: _____
Business Phone: _____ Facsimile: _____
Firm/Company: _____
Business Address (including City & Zip Code): _____
Email/Web Address: _____
Texas Board Certifications (TBLS): _____
Law School/Graduation Date: _____
List All Other Degrees: _____

If you are younger than 37 years OR have practiced in Texas for less than 5 years, please check here

Primary Areas of Practice* (select two):

* Having two areas of practice listed in the web directory is included in the fee for bar membership. If you would like three to five areas of practice listed, there is an additional \$75.00 posting fee. Choose from the following:

- | | | | | |
|--|---|--|--|--|
| <input type="checkbox"/> Administrative & Public | <input type="checkbox"/> Construction | <input type="checkbox"/> Family | <input type="checkbox"/> Juvenile | <input type="checkbox"/> Public Utility |
| <input type="checkbox"/> ADR | <input type="checkbox"/> Consumer | <input type="checkbox"/> Finance | <input type="checkbox"/> Labor-Employment | <input type="checkbox"/> Real Estate |
| <input type="checkbox"/> Antitrust | <input type="checkbox"/> Creditor-Debtor | <input type="checkbox"/> Government/Administrative | <input type="checkbox"/> Law Office Management | <input type="checkbox"/> School Law |
| <input type="checkbox"/> Appellate | <input type="checkbox"/> Criminal | <input type="checkbox"/> Health Care | <input type="checkbox"/> LGBT Law | <input type="checkbox"/> Securities Law |
| <input type="checkbox"/> Aviation | <input type="checkbox"/> Elder Law | <input type="checkbox"/> Immigration | <input type="checkbox"/> Litigation: Commercial | <input type="checkbox"/> Social Security Law |
| <input type="checkbox"/> Bankruptcy | <input type="checkbox"/> Entertainment | <input type="checkbox"/> Insurance | <input type="checkbox"/> Litigation: Personal Injury | <input type="checkbox"/> Taxation |
| <input type="checkbox"/> Business | <input type="checkbox"/> Environmental | <input type="checkbox"/> Intellectual Property | <input type="checkbox"/> Military | <input type="checkbox"/> Technology |
| <input type="checkbox"/> Collaborative Law | <input type="checkbox"/> Ethics-Legal Malpractice | <input type="checkbox"/> International | <input type="checkbox"/> Oil & Gas | <input type="checkbox"/> Wills-Trusts-Probate |
| | | | <input type="checkbox"/> Other | <input type="checkbox"/> Workers' Compensation |

Optional Information

Home Address: _____
Home Phone: _____ Birthdate: _____
Spouse's Name: _____ Number of Attorneys in Firm: _____
Date Licensed in Texas: _____
Other State Bar Admissions/Dates/License Numbers: _____
Do you speak a foreign language? _____ If yes, what language: _____

If you would like to post your photograph on the DCBA website, email your photo to Erin Manley at emanley@dentonbar.com. The website will be updated periodically throughout the membership year.

Application Certification

I, the undersigned, do hereby make application to the Denton County Bar Association for membership and, in making such application, I certify that I am validly licensed to practice law or am a law student of an accredited law school, that I promise to uphold and support the By-Laws of the Association and the Texas Disciplinary Rules of Professional Conduct in all respects and to the best of my personal and professional ability, that all information provided by me in this application is true and correct.

Signature of Applicant: _____ Date: _____

Application Submission

Please mail this application along with a check made payable to **Denton County Bar Association** in the amount of **\$195.00** or **\$150.00** (licensed in Texas less than two years) to DCBA at 512 W. Hickory, Suite 202, Denton, TX. 76201. Please **DO NOT** include Collaborative Law, Family Law, Criminal Law or Real Estate, Probate, and Trust Law Section dues with your DCBA payment. The DCBA membership year runs from May to May and dues are not pro-rated.

If you have any questions about the DCBA, please call the Denton County Bar Association at 940-320-1500. Visit our website at www.dentonbar.com/membership.shtml.