

# AAMA-LAW



amarillobar.org

Volume 30  
May 2016  
No. 9

A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

“ Because I am writing this before the deadline, the Spring Institute has not yet occurred, but I am confident that it went on without a hitch—other than that embarrassing incident on the golf course when Judge Schaap hit a 135 yard 8-iron into the green where Wade Arnold was lining up his putt. ” -Page 2

“ Being lawyers, you have undoubtedly been approached by a friend and asked to get them out of a traffic ticket. The usual response is “plead guilty and ask for deferred adjudication and it will not show up on your record.” Well . . . that avenue is not available to everyone. ” -Page 4

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## THANK YOU, JO ANN

Dedicated, loyal, steadfast, diligent, selfless—all words that describe what every lawyer should strive to be. These words do not describe a lawyer, but rather the wonderful Executive Director of our bar association for the past 15 years. It is with heavy hearts and deep appreciation that we write this article.

Jo Ann Holt has faithfully served the Amarillo Area Bar Association for more than a decade and a half. During that time, the Board, the Executive Committee and our local bar as a whole could rest easy knowing that regardless of what our association faced or what tasks may need to be accomplished, Jo Ann would take care of it all. Truth be told, the pay is not great, the benefits are non-existent (this is not an ad for a new director), and the “part-time” description of this job is a misnomer.

Jo Ann has put in countless hours making sure that the day-to-day functions of the AABA are performed at the highest level. Through her tenure, our bar has received awards, accolades, and respect among the other bar associations statewide. There is no single person that has served in any capacity in our association that deserves more of the credit than Jo Ann.



Jo Ann Holt

As an incoming officer or director of our association, there is no transition process, no learning curve as Jo Ann has been the constant to insure that all runs smoothly. For those of us who have served our bar during her tenure, we are all aware of the “Board Book” that she created and know that before we ask any question, we better consult the “Book” or Jo Ann’s first response to any question will be “It is in your Board Book.” We do not know how our association conducted its daily business prior to Jo Ann, but we do know that thanks to her foresight and planning, our association will run smoothly for years to come.



# PRESIDENT'S PAGE

By: Dusty Stockard

Hold back your tears, but this is the last article that I will have the “privilege” of writing for this fine publication. For the second time in the nine months that I have written this article, I will actually have it in before the deadline—the real deadline, not the continuously moving deadline which was afforded to me with most articles (7 out of 9).

It really has been a privilege to serve as your bar president this past year. I was fortunate to have great past presidents who were always helpful and stayed very much involved. The future is bright for the bar with Mark Logsdon assuming the post of president with Chris Jensen following the next year. For those of you who have not served in some capacity for our bar association, I encourage you to contact Mark or Chris and let them know your interest. It really is a great organization that does more for our local bar than most people know.

I would like to thank the officers and directors of our association this year as they are ones who do the work of our association. The REAL WORK however is handled by JoAnn Holt, who year after year makes our association run smoothly. Thank you, JoAnn, your work and dedication to our association is very much appreciated.

Because I am writing this before the deadline, the Spring Institute has not yet occurred, but I am confident that it went on without a hitch—other than that embarrassing incident on the golf course when Judge Schaap hit a 135 yard 8-iron into the green where Wade Arnold was lining up his putt. After a brief argument about whether Judge Schaap has ever hit any club 135 yards and why it takes Wade 5 minutes to line up a two foot putt that everyone knows he is going to miss, the matter was resolved when Judge Board (just getting Judge Schaap’s back) followed through on his kind offer to clean Wade’s clubs in the pond (they didn’t look much cleaner, but it was a good effort). Thanks to the Amarillo Police Department’s scuba team for pulling those out for Wade. And thank you to Tom Riney for attempting to “mediate” the matter by yelling, “Just hit him, your honor. You have immunity.”

Again, thank you all for allowing me to serve as your president this year. I wish each of you a great summer.



AMA-LAW is published monthly from September through May by the Amarillo Area Bar Association.

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	Single Issue
Business Card	\$50
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### Contact Us

For more information about your local area bar association or for address changes, contact Jo Ann Holt, Executive Director, at:

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Also visit our website at [www.amarillo-bar.org](http://www.amarillo-bar.org) for information and links to both local and state-wide legal resources.



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Former Federal Prosecutor  
[chrisdrakelaw@gmail.com](mailto:chrisdrakelaw@gmail.com)

# OLD LAWYER OF THE YEAR: BARRY D. PETERSON



Barry D. Peterson

Barry D. Peterson of Peterson Farris Byrd & Parker is AAYLA's 2016 Old Lawyer of the Year.

A native of Pampa, Texas, Mr. Peterson graduated from Texas Tech University in 1969 and St. Mary's Law School in 1972. He then joined Stokes, Carnahan & Fields, which became the firm we know today as Peterson Farris Byrd & Parker.

Mr. Peterson is a trial lawyer, having tried over 200 cases. He has received numerous honors and awards, including the 2015 Top-Rated Lawyer in Litigation in America by the American Lawyer and the National Law Journal. He is a Fellow of the Litigation Counsel

and has earned the preeminent AV rating from Martindale-Hubbell. He is a member of the College of the State Bar of Texas and a Life Fellow of the Texas Bar Foundation

He currently serves as secretary of the Texas Association of Defense Counsel and has served as vice-president of the Texas Association of Defense Counsel, president of the West Texas and Amarillo Chapters as an advocate in the American Board of Trial Advocates, and is a member of the Defense Research Institute.

Mr. Peterson has devoted countless hours to community and charitable organizations. He has served on the boards of the

Harrington Cancer Center, Amarillo Botanical Gardens, the Citadelle Art Foundation in Canadian, Texas, the Amarillo Symphony Orchestra, the Texas Panhandle Heritage Foundation, and the Golden Spread Council, Boy Scouts of America. He is also an active member of the First Baptist Church of Amarillo.

AAYLA invites you to the luncheon honoring Mr. Peterson at the Amarillo Club on May 4, 2016, at 11:30 a.m.

## AMARILLO AREA ESTATE PLANNING COUNCIL TWENTY-FIFTH ANNUAL INSTITUTE ON ESTATE PLANNING

Thursday & Friday, May 12 and 13, 2016

**William R. ("Trey") Cousins III** – Family Limited Partnerships and What We Have Learned from Litigating with the IRS.

**Chris Stack, Esq.,** - Maximizing the Value of 529 Plans.

**G. Murphy Davis** – Advising Clients in the Current Uncertain Markets

**John H. Brown** – Applying Exit Planning Concepts to Buyouts at Death / Planning for the Future of Your Business

**Walter T. "Four" Price** – Legislative Update & Interim Changes for the 85th Legislative Session.

**Clay Stribling** – Donor Advised Funds

**Professor Lee Schwemer** – Recent Tax Cases, Regulations and Rulings Relating to Insurance and Insurance Planning (Including Deferred Compensation Issues) Family Limited Partnerships, Valuation Issues, Defined Value Clauses, Marital and Charitable Deductions, Crummey Clauses, Administrative Expense Deductions, Qualified Plans and IRAS, and Other "Hot" Estate Planning Topics

**George A. Snell, III** – A Short Course on Oil and Gas Properties for Estate Planners



# 7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

Caught my one fish over Spring Break. Maybe I need to try different bait. Anyway, it's time to get back to work.

Being lawyers, you have undoubtedly been approached by a friend and asked to get them out of a traffic ticket. The usual response is "plead guilty and ask for deferred adjudication and it will not show up on your record." Well . . . that avenue is not available to everyone. For instance, in *In re State*, No. 07-16-00052-CR, 2016 Tex. App. LEXIS 2777 (Tex. App.—Amarillo, March 16, 2016), we recognized that a municipal court judge or a justice of the peace cannot grant deferred adjudication to someone who committed a traffic offense and carries a commercial driver's license. Of import though is our conclusion that the same prohibition applies to county court at law judges if the matter is appealed to them for a *de novo* trial. Remember that the next time you agree to help someone caught speeding.

We are always talking about "standards of review"; so, why not do it again. How about the one applicable when a party that had the burden to prove an issue (e.g., a plaintiff who has to prove the elements of his claim or a defendant who has to prove an affirmative defense) loses at trial and contends, on appeal, that the decision is legally and factually insufficient. Still awake? If so, then take a look at *Siwell, Inc. v. Watts*, No. 07-15-00063-CV, 2016 Tex. App. LEXIS 503 (Tex. App.—Amarillo January 19, 2016). The standard involves a two-step process. First, we search the record to see if more than a scintilla of evidence supports the decision of the factfinder (e.g., regarding the plaintiff's fraud claim. . . is there some evidence that the defendant did not misrepresent a material fact). If no such evidence is found, that does not mean the party wins. At that point, the second step comes into play, and we search the record to see if the party who had the burden proved each element of the claim or defense "as a matter of law." Pretty tough standard to meet and it's kind of like having to prove you were entitled to a summary judgment.

Remember that feeling you get upon receiving notice of a default judgment being entered against your client? You know you filed an answer but didn't know of the trial setting. Well, if you were not sent notice then the default can be set aside via a timely motion for new trial. The problem comes in proving the lack of notice since it is presumed that notice was sent and you received it. So the burden is on you to rebut that presumption via competent evidence, not mere allegations or conclusions. That was the situation we addressed in *Mostue v. Mangold*, No. 07-15-00402-CV, 2016 Tex. App. LEXIS 3393 (Tex. App.—Amarillo, March 31, 2016). The attorney's statement there that he may or may not have received notice but he didn't think he did was not enough.

**HISTORY IN THE MAKING**  
DOWNTOWN AMARILLO'S ORIGINAL HIGH-RISE  
CELEBRATES 90 YEARS



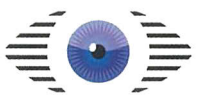
The Historic Amarillo Building, built in 1925, proudly celebrates her 90<sup>th</sup> Birthday!

Restored to its Art Deco grandeur by owners Kevin and Ginger Nelson, Amarillo's history permeates throughout as Amarillo's most respected businesses, accounting and law firms continue to make their mark.

EST 1925  
**AMARILLO BUILDING**

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# AAYLA UPDATE

By Blair Oscarsson

On March 26, AAYLA hosted its annual Eggstravaganza Easter Egg Hunt. It was cold, but everyone had a great time!



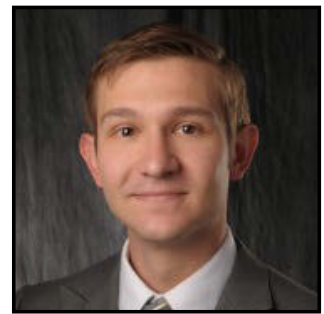
## LEGAL BRIEFS

### April Fishbowl Drawing

- \$25 Jack Howell
- \$50 Reuben Hancock
- \$75 Chris Harkins
- None were present to win

If you have news, we want to hear from you. Send your information to the AABA: email [director@amarillobar.org](mailto:director@amarillobar.org), fax 379-9259, or call 371-7226.

# YOUNG LAWYER OF THE MONTH: JOHN HINDERS



John Hinders

John Hinders was raised—from the age of five—in Amarillo, where he graduated from Amarillo High School in 2007. He attended the University of Texas at Austin for his undergraduate education in English and French. He liked UT and Austin so much that he decided to stay for his legal education, receiving his J.D. in 2014. During law school, John was involved with the American Journal of Criminal Law and the Texas Law Students for Reproductive Justice. After law

school, John joined Mullin Hoard and Brown, LLP and returned to the Panhandle, where much of his family still resides. John's practice includes civil litigation in a variety of areas, but he has developed a particular interest in estate planning and in banking law. John and his wife, Brittani (a Perryton native), live in Amarillo with their Australian and German Shepherds, Roscoe and Wicket. In his free time, John enjoys reading, wood carving, and playing tennis, which he does very poorly.

**TnT**  
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# SAVE THE DATE

## AMARILLO AREA ESTATE PLANNING COUNCIL TWENTY-FIFTH ANNUAL INSTITUTE ON ESTATE PLANNING

Thursday & Friday  
May 12 and 13, 2016

### *AABA History Quiz*

**WIN A ROLLING BRIEFCASE!**

Be the first to correctly answer the question below and send your answer to [magnew@bf-law.com](mailto:magnew@bf-law.com) and you will win a rolling briefcase provided by the State Bar of Texas.

*How long has Executive Director Jo Ann Holt served the Amarillo Area Bar Association?*

*April Answer: Dodge City, Kansas      April Winner: Alex Yarbrough*



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**Tim D. Newsom**, Immediate Past President

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**Blair Oscarsson**, AAYLA President  
**Jo Ann Holt**, Executive Director  
**Matthew Agnew**, Editor of AMA-LAW

# YOUR BAR EVENTS - MAY 2016

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
				Institute on Estate Planning		
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				
	Memorial Day, Office Closed					