

AMA-LAW

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NO. 2

Meet your President - Michele Fortunato

I was born and raised in Dallas and graduated from Bishop Lynch High School, home of the Fighting Friars. Who knew Catholics could be so ironic? Texas Tech was the venue of choice for college, mostly due to the 70s and anti-war demonstrations at closer, more liberal campuses. I received a BA in history and English, together with a teaching certificate, and taught Texas history, language arts and English for several diverse and challenging years. I retooled my skills, made a quick career detour, and I became a paralegal at a large Houston law firm.

My designated practice group was banking, and the time period was the late 70s when the banks in Houston were loaning millions of dollars to sketchy oilfield suppliers who were enjoying the oil boom in the Gulf of Mexico, mostly off the Louisiana coast. I saw more of Louisiana than I wanted to see and became fairly knowledgeable about Louisiana parishes and chattel mortgages. Big diamonds, gold chains, and Cajun accents were the standard fare at the closings. This was in the good ole days when we had actual closings with real people in one room.

After six years of almost practicing law while my boss spent his days swigging Scotch around his swimming pool, I decided to make the leap to law school. The University of Houston Law Center was the most logical choice, and I was relieved to discover I wasn't the oldest person in my class. Law school was fun and scary, and after graduation I went to work for a law firm in Houston which no longer exists representing banks which no longer exist.

David Horsley and I met along the way, when we were students at Texas Tech. We dated not very seriously or exclusively and not for very

long before he dumped me for some other girl. Two years later, he realized his folly, and circled back around to see if we could make a life together. He has been the stabilizing force in my life for over 30 years.

I loved practicing law in the fast paced Houston legal world, but the births of Matthew and Rachel helped me reevaluate my goals and seek an upgrade in our quality of life. We left Houston behind and took a chance on Amarillo, where we thought we knew no one except fellow lawyer Betty Little, who was the ex-wife of one of David's college buddies. The law firm that

hired me imploded during my first 30 days on the job. It was a tenuous but fitting new start for our family. Amarillo quickly became home and I settled into the practice of corporate and business law with the remaining members of the Underwood Law Firm for several years before leaving to start Brown & Fortunato, P.C.

Founding a law firm was not in my career goals, but being part of the launch

of a new law firm taught me a lot about business and risk and helps me be a better counselor and advisor to my clients. I appreciate the support and collective wisdom of the team at Brown & Fortunato, P.C. as I continue my corporate and business law practice with them.

My youngest "child" has headed to college and I'm currently in a transition mode. I'm not too worried about the empty nest as free time from high school and extracurricular activities is filled by serving as a Regent at Amarillo College, a Trustee at Polk Street United Methodist Church, and a cabinet member for the United Way campaign. I'm looking forward to the surprises and changes which this transition period will bring and the new challenges ahead.



“After six years of almost practicing law while my boss spent his days swigging Scotch around his swimming pool...”

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“he also downed a 72 oz. steak at the Big Texan earlier this year which he purportedly counts as one of his greatest accomplishments.”

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“recent articles indicate that Libras and attorneys are above-average insurance risks”

- Page 4

“Pero si hablan en una lengua que el corte no puede comprender, ellos no pueden ganar.”

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President's Page

Michele Fortunato

Whether it was good planning, visionary genius or just dumb luck, we started focusing on our heritage in *Ama-Law* several years ago. With the help of James Wester and the promise of immunity, *Legal Yarns* has unlocked stories from the memories of our members which have entertained and enlightened us. How would we otherwise know that Fred Griffin interviewed for his job with the city attorney's office at the Potter County jail, where the City Attorney was incarcerated by Judge Robinson for contempt? These stories provide an insight into our historical (some might say hysterical) foundation. The timing of the publication of these collective reflections could not be better as we prepare for our centennial celebration in 2010. One of our goals for our centennial celebration is to publish a book which highlights our rich history. We appreciate the time it takes to put your stories into a written form. Keep sending your stories and photographs as we share our past and reminisce about days gone by.

After over six years of coordinating our local CLE offerings, Laura Hamilton has decided that changes in her professional pursuits mean it is time to turn the CLE helm over to a successor. The AABA has been well served by Laura and her assistant Deitra Hill and their dedication to the mission of bringing CLE courses to our doorstep. We appreciate the efforts and volunteer hours which Laura and Deitra have invested in this project. Not only is it economical and more convenient for our members to attend CLE in Amarillo, but the AABA has benefited with much needed revenue. Our next step is to form a committee to help coordinate the CLE courses which the AABA brings to Amarillo. If you are interested in serving on a CLE committee to help with the registration and logistics for the CLE courses, please let me know. The next course will be Advanced Family Law on October 24-26 which will be held as scheduled. You will find information about registering for this course in this issue of *Ama-Law*.

Many thanks to the 7th Court of Appeals which used its budget to purchase 2 metal detectors to be used in the Potter County courts building. The AABA is continuing to work with the Potter County sheriff's office on a plan for courthouse security which will be submitted to the commissioners. We will keep you posted as developments occur, but we are making progress and moving in the right direction on this very important issue.



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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:

Amarillo Area Bar Association
Eagle Center
112 West 8th Avenue, Suite 615
Amarillo, Texas 79101
e-mail: amabar@arn.net

Phone: 806-371-7226

Also visit our website at www.amarillobar.org for information and links to both local and state-wide legal resources.



AAYLA Update

Fall has arrived . . . the dove are flying, the antlers are growing, there are football games on television five nights each week, and, yes, there are many new lawyers in town who are in need of an orientation. The annual AAYLA New Lawyer Membership Drive and Orientation will be held on October 4, 2007. Those participating will need to meet at ANB Plaza One, 16th floor at 1:15 for a short introduction reception. They will then take a tour of the state and federal courthouses in Amarillo. The event will conclude with a reception at the Amarillo Club. Please let Joni Kleinschmidt and/or Matt Whitten know the names of those new lawyers who would benefit from attending the orientation.

Speaking of Matt Whitten, that young man has had quite a year. Not only is he plan-

ning to be married later this month, he also downed a 72 oz. steak at the Big Texan earlier this year which he purportedly counts as one of his greatest accomplishments. I understand, although I cannot confirm, that a videotape exists documenting this laudable, gastronomic feat. I am not sure if glut-tony tops the list of vices to be foregone when reciting nuptials, but I am glad that he got that out of his system prior to his wedding.

AAYLA will also be hosting its annual Swearing-in Ceremony

on November 8, 2007. Ms. Laura Burke of the Brown & Fortunato law firm will be heading up that event. Please mark your calendars for that event.



By Mark S. Logsdon

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October Bar Luncheon

Topic: Texas Supreme Court Update

GARY BELLAIR

Meet the October Bar Luncheon Speaker: The following is an autobiographical (and self-laudatory) statement of Gary Bellair:

The “stars” determined my interest in justice: born a Libra, I took my first breath in San Bernardino, California.^[1] But most of my childhood breathes took place in the Windy City, which is where my parents returned after my father finished his stint in the military.^[2] There, despite living on the south side, I became a die-hard Cub fan while watching games on television with my great-grandfather.

With adolescence came another relocation. Minneapolis is where I learned to play hockey, earned honors as a thespian, became a scuba diver, sailed its lakes and shoveled mountains of snow.^[3]

I continued shoveling after graduating from St. John’s University with a B.S. — I dug ditches for high-voltage duct banks while I learned about electrical construction from the ground up. By the time that I left Minnesota, I was managing various and sundry electrical-construction projects.

My wife, Lorrie,^[4] and I moved to Lubbock with the expectation that we would live there no longer than was necessary for me to obtain an M.B.A. But our expectation was short-lived. Lorrie sought another degree soon after I obtained my degree. And our roots grew deeper with the birth of our son, Gu?,^[5] who entered the first grade when the “stars” prevailed upon me to become a 1L.^[6]

I survived hell week thanks to the wise counsel of Gary Condra, to whom I owe a debt of gratitude. Others on my debt-of-gratitude list are Lorrie, who is a source of unconditional support, and Don Hunt, who I began practicing law under the tutelage of.

My first case, *Avmanco, Inc. v. City of Grand Prairie*, 835 S.W.2d 160 (Tex. App.—Fort Worth 1992, pet. dism’d), was, until recently, one of note. The case — a summary-judgment case which pitted me against a protégé of a well-renowned, summary-judgment guru — resulted in a victory snatched from the jaws of defeat. *Avmanco*, 835 S.W.2d at 165 (holding, *inter alia*, Grand Prairie had no immunity from suit because its charter provided that the city “may sue and be sued” and section 51.075 of the Local Government Code provided that municipalities may “plead and be impleaded”). But the victory lost some of its luster when a majority of the supreme court jettisoned “established law” without “a compelling reason,” *Tooke v. City of Mexia*, 197 S.W.3d 325, 356 (Tex. 2006) (O’Neill, J., dissenting), by holding that the words “sue and be sued” and “plead and be impleaded” are, standing alone, neither clear nor unambiguous waivers of a sovereign’s immunity from suit, *id.* at 342.

I currently practice law with the firm of Craig, Terrill, Hale & Grantham, L.L.P. The focus of my practice is civil-appellate law, which is the field of my board certification by the Texas Board of Legal Specialization. I also have the privilege of serving as the municipal judge of Ransom Canyon.

¹Apparently, the “stars” contemporaneously determined the cost of my auto insurance: recent articles indicate that Libras and attorneys are above-average insurance risks

²As a consequence of the move from California, I am one who truthfully sings all the lyrics to “California here I come.”

³Jumping out of airworthy planes is another, albeit rare, past time.

⁴Lorrie is the Executive Director of Lubbock Meals on Wheels.

⁵Gu?, who is currently teaching and coaching in Jacksonville, thought that he was humoring his mother when he agreed to consider attending my alma mater. But the humor became serious: Gu? graduated from St. John’s University after deciding that he wanted to play football for Coach Gagliardi. As a consequence, Gu? for Coach Gagliardi. As a consequence, Gu? was a member of SJU’s football team when Gagliardi broke the all-time collegiate win record on the way to coaching a perfect 14-0 season that culminated with the NCAA Division III championship.

⁶Besides the prevailing stars, Chuck Lanehart, albeit unknowing, encouraged me to become a lawyer

Lawyer Privacy Bill

Takes Effect Sept. 1

— Gov. Rick Perry signed into law legislation that allows lawyers to keep confidential State Bar records that include their home address, home telephone number, Social Security number, email address, and date of birth. Attorneys who want to restrict personal information for public access can do so one of two ways: (1) by going to their attorney profile contact information on www.texasbar.com and checking the box requesting restriction of home information using the Home Address fields, or (2) completing the Restriction for Public Access of Personal Information Form available at www.texasbar.com/membership. Attorneys whose home address is the only address on file who choose to restrict it for public access should consider providing an alternate public contact (or office) address for clients or potential clients. Attorneys can update the “office address” in their online attorney profile contact information on the State Bar website. For more information, call Membership at (800)204-2222, Ext. 1383.

UPDATED CLE SCHEDULE

October 24,25,26:

Advanced Family Law Basement Training Room, Eagle Center

November 28,29,30:

Advanced Personal Injury Law Basement Training Room, Eagle Center

December:

Advanced Evidence & Discovery

January 11:

Building Blocks of Wills, Estates & Probate Basement Training Room, Eagle Center

January 24&25:

Advanced Oil & Gas & Energy Law Sprouse Shrader Smith Conference Room

February:

Advanced Estate Planning & Probate

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7th Court of Appeals Update

by Justice Brian Quinn

The following are summaries of selected civil and criminal opinions issued by the Seventh Court of Appeals during August 2007. They are written as an overview only. Readers should review the complete opinion before relying upon what is said.

Accomplice Witnesses

In *Davis v. State*, No. 07-07-0025-CR, 2007 Tex. App. LEXIS 6423 (Tex. App. — Amarillo August 14, 2007, no pet. h.), appellant was convicted of burglarizing a habitation. Accomplice testimony was used to obtain the conviction. However, the trial court did not include an accomplice witness instruction in its charge. This appellant claimed to be error. So too did he assert that there existed insufficient non-accomplice evidence to corroborate the accomplice's testimony. We rejected the latter claim since the record disclosed that appellant 1) had a history of soliciting money from individuals, including the burglary victim; 2) was seen peering in various apartment windows within 24 hours of the burglary; 3) pawned a PlayStation II like the one stolen at a nearby pawn shop shortly after the robbery, and 4) was with the accomplice prior to and after the item was pawned. And, because there existed sufficient

evidence to corroborate the accomplice witness testimony and no one objected to the missing instruction at trial, the omission was not egregious error warranting reversal.

Spoliation

In *Caldwell v. Carrollton Air Conditioning, Inc.*, No. 07-05-0241-CV, 2007 Tex. App. LEXIS 6743 (Tex. App. — Amarillo August 22, 2007, no pet. h.) (motion for rehearing pending) we addressed the issue of spoliation, among other things. A furnace door was discovered missing when the furnace was delivered to Caldwell after being removed from his home. The furnace had previously been in the possession of Carrollton. So, Caldwell charged the company with spoliation. We rejected the claim because no evidence illustrated that the loss hampered Caldwell's ability to prosecute his suit against Carrollton. This was so because even if the blower door was the source of the leaking carbon monoxide inhaled by Caldwell, no evidence indicated that Carrollton did anything to the furnace to cause it to leak the gas or that the gas was present and subject to discovery when Carrollton came to service the unit. In short, the complainant must illustrate that the purported destruction of evidence prejudiced

him before he can reap the benefits of spoliation.

Speaking English

Cuando tiene algo para decirnos, decirnos en ingles por favor. Reconocidamente, abogados son muy inteligente y pueden hablar con palabras especiales. Pero si hablan en una lengua que el corte no puede comprender, ellos no pueden ganar. The long and short of it is, when presenting your case, please make it comprehensible. Assume what some already think . . . we know nothing. Help us out by avoiding when possible technical words outside the realm of common parlance. You may know what you are talking about, but if the court does not then your intelligence is wasted. Please, please, please, please please.

Legal Briefs

• **David LeBas** and **Sandy Webb** have joined Sanders Baker. LeBas will continue his work in complex litigation, agribusiness, and banking law, while Webb will focus on construction and environmental law. www.sandersbaker.com

• If you drafted a will for James Benjamin Davis Jr., born October 24, 1952; died August 31, 2007, please contact Jo Ann Holt at 371-7226.

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

Wingspread VIII, Fort Worth, TX

**Texas Wesleyan University School of Law & the Hilton Fort Worth
October 4, 5, 6, 2007**

Wingspread is the collaborative national organization for professional school involvement in pipeline initiatives, an informal consortium with distinctive appeal, strengths, and impressive loyalty among its participants. It offers a highly placed and visible constituent base for national policy leadership and success in conceptually framing and drawing attention to the issues around diversity and the law community and the need for systemic and systematic change; enhancing the intellectual presence of law schools and their sister professional schools in the field of pipeline issues as participants, conveners, and collaborators; emphasizing, inspiring, and creating teams to work along the educational pipeline in site-specific projects; and assuring that lessons learned are lessons shared.

Wingspread involves a group of over 40 law-schools working with teams that includes P-20 educators, the bench, and the bar, all committed to working collaboratively across the educational continuum to improve the participation, persistence, and success of diverse students in high school and college. The goal of the group is to enhance these students' aspirations and capacity to move into positions in the legal profession and in the leadership of the nation.

The 8th meeting of the group is focused on team-building and on action plans for collaborative improvement in outreach along the pipeline. The meeting also brings the law pipeline group together with their colleagues in medicine and dentistry. Specific sessions will include Wingspread for Newcomers; Law-Themed Curricula and Schools including both elementary and law magnet programs; Perspectives from our Sister Professions; Prelaw Programs; and the View from the Bench and the Bar. And, of course, Texas barbecue. To register, contact Casey Dyer at 817-212-3934, cdyer@law.txwes.edu !

Registration is \$125.00. For general Wingspread information, contact sarah.redfield@gmail.com FMI: Professor Sarah Redfield, sredfield@pacific.edu. Wingspread VIII

Legal Yarns

REALITY or FICTION

By James Wester

Many people seem to enjoy the reality shows and the game shows. Considering that fact and knowing that lawyers are not immune, here is a contest combining those themes. Please email me and let me know if you think the following Legal Yarns are real or merely fiction?

A lawyer received a call from a woman in Oklahoma regarding obtaining custody of her children. Apparently, the woman was imprisoned several years before for physically abusing her children and had been recently released. While she was being prosecuted for abuse, her now ex-spouse was given custody of the children (is that startling?). Upon hearing of her quest to establish visitation with her children, the Amarillo lawyer explained that she needed to hire a lawyer in Oklahoma, where the children reside. The plot thickens as the woman explains that she had already retained a lawyer in Oklahoma, BUT she wanted to hire the Amarillo lawyer to be in a position to tell the

court that she was engaged to a lawyer in Amarillo. Her philosophy was that the judge would allow her to have unsupervised visitation and maybe even award her custody IF she was engaged to a lawyer.

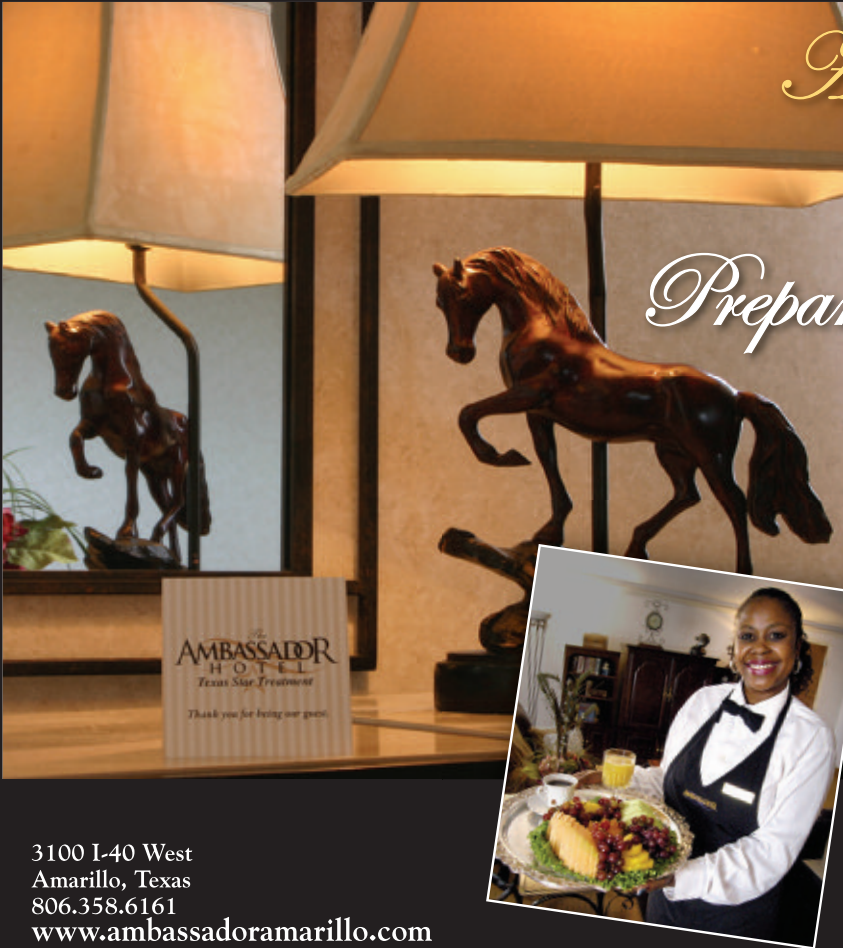
A client contacts a lawyer because the client attempted to sneak a cup of hot coffee into his local movie theater. Not having anywhere else to hide the coffee cup, he slides it under his shirt to sneak it into the theater. As the client was crawling over others to get to his seat, the client gets pushed, spills the coffee and burns himself. [Note: it was not McDonald's coffee] A gregarious lawyer takes the case against the coffee chain despite the preposterous set of events and successfully convinces the chain of their potential exposure. The client ultimately agrees to settle the case by receiving free coffee for life at any of their stores throughout North America and in Europe.

A frantic woman calls and wants to know if the lawyer could handle her malpractice case.

The beloved family dog had apparently wandered into the street in front of an oncoming vehicle. While not killed, the dog was severely injured in the accident. The family immediately took the dog to a local veterinarian. Upon examining the dog, the vet informed the family that the dog had a number of internal injuries that would require surgery. Not surprisingly, the vet would not guarantee that the surgery would save the dog's life. The vet estimated surgery at about \$500. The woman explained to the vet that the family did not have \$500 to pay for the surgery. Much to the bewilderment of the family, the veterinarian did not perform the surgery and the dog ultimately died. Hence, the call regarding the malpractice case.

After proving up a divorce and having the Judge sign the decree, the client and lawyer exit the courtroom. The client pulls the lawyer off to the side and whispers that he thought of something while on the stand that he "guesses" he should have mentioned before. Just before he went to prison the first time (the lawyer was unaware that there had been any "times"), he married a young lady. Upon further questioning, the client could not remember whether or not the "young lady" a/k/a "first wife" had divorced him while he was in prison. He was also "pretty sure" that they did not have any children.

Please email me at James.Wester@uwlaw.com with your answers. In addition, please feel free to email me any of your Legal Yarns. One name drawn from all correct submissions will win a \$20.00 gift certificate to Starbucks.



A

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Abby is a miniature Beagle who is a hound for obscure, interesting, and/or outrageous legal treats. Her briefs are meant to educate and entertain. If you have any Legal Beagle-worthy tidbits, please e-mail Abby at legalbeagle.aaba@sbcglobal.net. Submissions will be published in this column and attributed to the sender. Abby is a stickler for Shepardizing, so please cite your source.

Before allowing a client to pay court-ordered attorney's fees to opposing counsel in bags of pennies, give the client some good cents advice and tell him to read *In re Marriage of Powell*, 170 S.W.3d 156, 157 (Tex. App.—Eastland 2005, no pet. h.).

"Under Texas law, if a tort is not expressly covered by a statute of limitations, we presume the tort is a trespass for purposes of determining the statute of limitations and apply the two-year limitations period as per Civil Practice and Remedies Code section 16.003(a)." *David L. Smith & Associates v. APT*, 169 S.W.3d 816, 822-23 (Tex. App.—Dallas, 2005, no pet. h.).

See Rule 289, Texas Rules of Civil Procedure for the four circumstances when a jury may be discharged prior to reaching a verdict, and assuming that a verdict is still required:

- the jury cannot reach a verdict and the parties consent to

their discharge,

- they have been kept together for such a length of time that it is "improbable that they can agree,"
- an accident or calamity requires their discharge, or sickness or other cause reduces their number below that required for a jury in the court.

🐾 Congratulations to **Mike Smiley**. He correctly guessed that last month's picture was **Kelly Utsinger**. Smiley knew immediately that the picture was of a younger Utsinger. "The combination of the ugly western shirt and the universal hand sign for Wild Turkey was a dead giveaway," he said.

A picture is worth...

Be the first person to correctly identify this young person to legalbeagle.aaba@sbcglobal.net. The winner will receive a prize. The correct answer and the name of the winning contestant will appear in November's edition of AMA-LAW.



The following names were drawn from the fishbowl at the August luncheon:

\$25	George Harwood
\$50	John Huffaker
\$100	Susan Coleman

None were present to collect their winnings

Young Lawyer of the Month

Michelle Sibley is in her fourth year as an associate with Sprouse Shrader Smith P.C. She received her J.D. from the University of Oklahoma in May 2004, much to the dismay of her family who are all tried-and-true Oklahoma State University alums and supporters (Go Pokes!!!). Michelle completed her undergraduate work at OSU in 1997, earning a Bachelor of Science in Elementary Education. Upon completion of her student teaching, Michelle realized that teaching was not for her, so she began the search for a new career.

After graduation from OSU, Michelle returned to her hometown of

Woodward, Oklahoma and began working for a local community bank. Two years later, she was tired of the small town life and ready for another change.

In late 1999, Michelle moved to Old Westbury (Long Island), New York and took a job as a nanny for a family with four – count 'em four – precocious young children. After surviving almost two years of nanny/car pool purgatory, she decided that surely law school couldn't be all that bad!

Michelle is licensed in both Texas and Oklahoma, and her practice focuses primarily on oil and gas and general commercial transactions.



Michelle Sibley

Michelle and her husband, David Palmer, were married this past April. David is a classical musician, so Michelle is currently learning a lot about classical music, while David is learning to tell the difference between the Counting Crows and Cross Canadian Ragweed. They enjoy cooking together, working on small home remodeling projects (which somehow always turn out to be big projects) and traveling whenever and wherever they can.

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For more information, contact Stacy Yates at 367-9088.

◆ ◆ **ADVANCED FAMILY LAW 2007** ◆ ◆

OCTOBER 24-26, 2007

8:30 A.M. TO 5:00 P.M.

**The video course will be held in the basement Training Room of the Eagle Center, 112 W. 8th Avenue,
Amarillo, Texas 79101**

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Approved for up to 37.25 hours of CLE credit including up to 5.25 hours of Ethics.

Registration fee is: \$ 400

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all of my life?”***

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 - Define deviations from and adherences to the applicable standards of care.
 - Assess the alleged damages and/or injuries.
 - Identify factors that caused or contributed to the alleged damages and/or injuries.
 - Organize, tab and paginate medical records.
 - Summarize, translate and interpret medical records; put into a report to make your day in court/deposition much easier.
 - Identify and recommend potential defendants.
 - Conduct literature search and integrate the literature and standards/guidelines into the case analysis.
 - Identify and review relevant medical records, hospital policies and procedures, other essential documents and tangible items.
 - Identify tampering in medical records.
 - Locate expert witnesses. Work with them, assisting them to prepare for testifying.
- And much more.....

Mona Betzen, RN, CCRC, CLNC
(806) 355-5817



Your Bar Events - October 2007

S	M	T	W	T	F	S
	1	2	AAYLA Board Meeting, 12:00 p.m. Sprouse Law Firm	AABA Board Meeting, 11:45 a.m. Amarillo Club	5	6
7	8 Columbus Day	9	10	11 Bar Luncheon, 11:45 a.m. Amarillo Club	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31 Happy Halloween			

Advanced Family Law CLE, 8:30 a.m.-5:00 p.m. Eagle Center

Michele Fortunaro, President
 Kelly Usinger, President-Elect
 Justice James T. Campbell, Vice President
 Michelle Sibley, Secretary-Treasurer
 Mark D. White, Immediate Past President

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