

AMARILLO-LAW

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A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

CHIP BROOKER: NOVEMBER GUEST SPEAKER

“In a way it assures the separation of church and state and freedom of religion . . .”

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“[I am guided by] my moral code and my legal code, and I am yet to learn that there is a distinction between them.”

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Chip Brooker

Last year, Dallas County saw the second largest verdict in its history. The \$242 million verdict (including \$144 million in punitive damages) against Toyota was awarded to parents of two children who were horrifically injured in a car crash. The family's Lexus was struck from behind, causing the front seats to recline backwards and knock the parents' heads against their children's heads. The plaintiffs argued that "seatback" injuries were well-known in the industry and had been since the early 1990s. Toyota argued the injuries were the result

of specific factors at play in that particular collision and not a design or manufacturing defect, but the jury did not buy that theory.

On November 14, our guest speaker will be Chip Brooker from Dallas, who represented the family. Chip will share his experience with Toyota and other big cases that he has handled. He will discuss unique aspects of taking on huge cases – the triumphs and the difficulties.

Brooker is a former defense attorney who joined the Law Offices of Frank Branson in 2013 to represent plaintiffs. Earlier this year, Chip formed Brooker Law where he continues his work on the plaintiff's side. At his own firm, Chip represents families and individuals around the country in wrongful death and serious personal injury cases, including those that involve (alleged*) dangerous and defective products, (alleged*) sexual assault, (alleged*) horrific trucking and transportation crashes, on-the-job injuries (allegedly*) caused by employers, (alleged*) business torts, and other claims.

Please join us at noon on November 14 at the Embassy Suites as we welcome Chip Brooker.

*annotations by a defense attorney

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PRESIDENT'S PAGE

By: Joby Mills

THINK LOCAL – ATTEND AABA/AABF/AAYLA/AAWBA SEMINARS & EVENTS – DON'T BE A MISSING AABA MEMBER!

With the growth of technology and accessibility to packaged online CLE programs and seminars, many County Bar Associations are suffering from reduced attendance totals at local CLE seminars, luncheons, and other events. Just making a plug for everyone to attend "local AABA/AABF events," plus the Amarillo Area Young Lawyers Association "AAYLA" (they usually let us older folks show up too!) and Amarillo Area Women's Bar Association "AAWA" (yes, the guys are welcome to attend as well!) events, since all of these organizations have a lot of great events each year and it's a wonderful opportunity to continue to network and meet folks who you may not see in your day-to-day practice. By increasing our attendance numbers at local events, this means we increase the revenue for each of the respective local legal organizations serving our area members and it also allows for us to expand the numbers of various bar-related activities each fiscal year. I hope to see many of our members at our next monthly AABA luncheon on Thursday, November 14th. We have had a couple of great luncheon speakers to kick-off this fiscal year and it's a great time of fellowship with other AABA members. Our attendance has been around 70 members at our first two luncheons, but I know we can get closer to 100 members in attendance.

Speaking of November events, we have a very special Investiture Ceremony scheduled for November 20th to recognize the Honorable Matthew Joseph Kacsmayk as our newly appointed and sworn in United States District Judge for the Northern District of Texas, who will preside over the Amarillo Division. Judge Kacsmayk received his Bachelor of Arts degree from Abilene Christian with summa cum laude honors, and his Doctor of Jurisprudence from the University of Texas School of Law, graduating with honors. Please mark your calendars to attend the Ceremony and congratulate Judge Kacsmayk on his judicial appointment. See the announcement included in this newsletter for more event details.

Lastly, I know I recommended to our members that you look to satisfy your CLE hours by attending more local CLE approved seminars, luncheons, and other events. On behalf of the AABA Executive Board,

we welcome any seminar or other event recommendations and comments as we strive to always strengthen our line-up of events, including CLE offerings. If you have some recommendations for the "comment box," please do not hesitate to email those ideas to director@amarillobar.org or give me a call directly at (806) 349-9893. We are here to serve the needs of our general membership and we always welcome your thoughts and ideas. See you at our next meeting!



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Contact Us

For more information about your local area bar association or for address changes, contact Janet Byars, Executive Director, at:

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7TH COURT OF APPEALS UPDATE

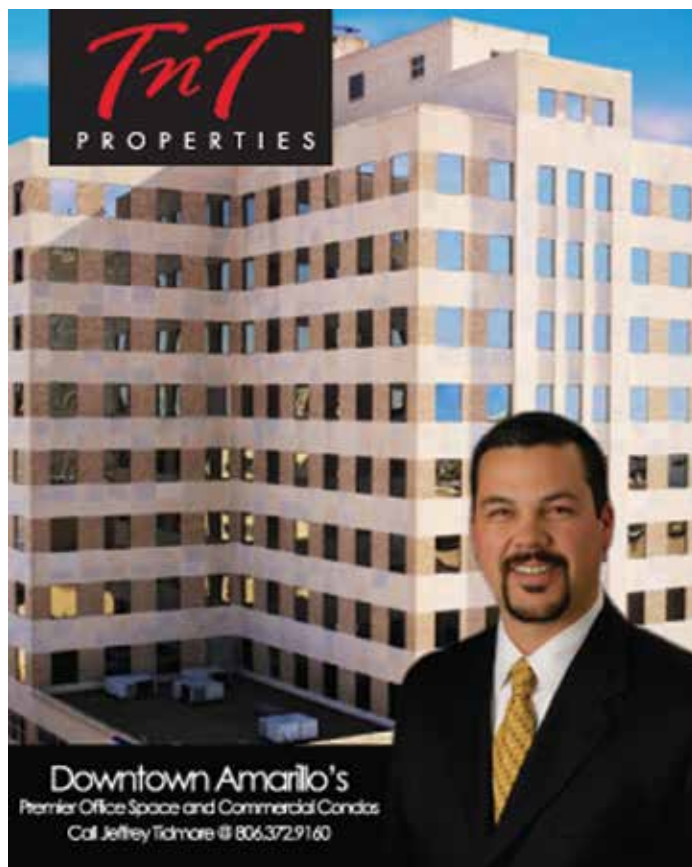
By Chief Justice Brian Quinn

A court of general jurisdiction seems to suggest that the court can hear anything. We know that is not true, though, don't we. Well, there is one more type of dispute it can't adjudicate, like the one in *In re Torres*, No. 07-19-00220-CV, 2019 Tex. App. LEXIS 6516 (Tex. App.-Amarillo July 30, 2019, orig. proc). Apparently, one group of parishioners of Templo Bautista ousted another group and assumed control of the church. Various ousted members sued those doing the ousting, which included Torres. Torres moved to dismiss the suit under the auspices of the ecclesiastical abstention doctrine. It bars civil courts from adjudicating ecclesiastical and "church polity" matters. While what falls within the scope of such matters may not be clear, we concluded that things such as the removal and replacement of a pastor, whether his removal complied with church procedures, the removal of parishioners and the way parishioners came to govern the church did. They implicate church governance and stewardship with which civil courts may not interfere. In a way it assures the separation of church and state and freedom of religion, and I bet you heard of those.

Constitutional issues don't always involve such big topics like separation of church and state or freedom of religion. They can also be about the payment of a \$2 filing fee, like in *Hogan v. State*, No. 07-18-00189-CR, 2019 Tex. App. LEXIS 4894 (Tex. App.-Amarillo June 12, 2019, no pet.). There, Hogan argued that a \$2 fee included in the bill of costs he was ordered to pay was unconstitutional. It was unconstitutional, in his view, because it violated the separation of powers doctrine. Under the doctrine, a statute cannot make the courts "a tax gatherer". If it does, then the court is exercising powers invested in the executive branch of our government. We concluded that

the \$2 fee in question was not a tax, though, but rather a fee for recouping expenses incurred in prosecuting someone. Recouping such expenses did not violate the separation of powers doctrine.

"Closing time ... open all the doors and let you out into the world." I close with a question you were probably asked back in your law school Texas civil procedure class. Does the trial court have jurisdiction to act upon a motion for new trial that has been denied by operation of law and an appeal perfected from the final judgment? Check out Texas Rule of Civil Procedure 329b(e) and our opinion in *Gordon v. Demmon*, No. 07- 2019 Tex. App. LEXIS 3262 (Tex. App.-Amarillo April 23, 2019, pet. denied) for the answer. Okay, I'll end the suspense. The answer is ... maybe. It depends upon whether the trial court granted the motion within 30 days of the date it was denied by operation of law. With that "you don't have to go home but you can't stay here." Thanks, Semisonic; we're closed.





AAYLA UPDATE

By Thomas McMillian

"[I am guided by] my moral code and my legal code, and I am yet to learn that there is a distinction between them." – John Tyler, The United States' seventh lawyer-president.

November is here which means the holidays are approaching! The weather has (finally) turned cooler, football season is in full swing, and we're all ready to gorge ourselves while spending time with family and friends when Thanksgiving comes around at the end of the month. This also marks the time of year that we welcome a new crop of attorneys to our profession. The annual swearing-in ceremony will be held on November 6, 2019 at the 7th Court of Appeals. The ceremony will start at 4:00 P.M. and a reception will follow at the Amarillo Club. Please contact Titiana Frausto at Titiana.Frausto@uwlaw.com if you or anyone at your office would like to be sworn in. Please join us in welcoming the newest members of the Amarillo legal community.

The Amarillo Area Young Lawyers Association will be hosting the 16th Biennial Las Vegas CLE on Friday, February 7, 2019 at the Venetian and Palazzo Resort and Casino in fabulous Las Vegas, Nevada. We are reworking the program to accommodate a change in the flight schedule. The CLE will start on Friday morning and will include brunch as well as a happy hour at the conclusion of the program in the afternoon. Rooms will be available at the negotiated rate on Thursday, Friday, and Saturday nights. Booking information will be

circulated as soon as it is available from the hotel. I hope to see you all there!

I wish all of you a Happy Thanksgiving. Gobble gobble!



Joby Mills



Alisa Scott



Scott Richardson



Todd Wetsel



Buffy Haden



Terri Wright



Kevin Rider



Hunter Vagrosky



Terry Wright



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Monique Pena

Monique grew up just across the Texas border in Texico, New Mexico (not to be confused with the gas station "Texaco"), and graduated from Texico High School in 2010. In 2013, she earned her undergraduate degree from the University of New Mexico with a major in Criminology and Sociology, graduating magna cum laude.

Monique received her law degree from the University of Oklahoma College of Law in Norman, Oklahoma. While in law school, Monique was a member of the American Indian Law Review, Vice-President of the Hispanic Law Student Association, and worked at the OU

YOUNG LAWYER OF THE MONTH: MONIQUE PENA

College of Law Civil Clinic where she helped represent indigent clients. In the Summer of 2015, Monique studied abroad with the legal studies program at the University of Oxford in England.

Monique moved to Amarillo in the fall of 2017 and joined Brown & Fortunato

as a member of the firm's Health Care Group. She is a member of the State Bar of Texas, AABA, and recently joined the AAYLA Board. In her free time, Monique enjoys traveling, attending concerts, reading, recreational sports and spending time with family and friends.

AABA History Quiz

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Be the first to correctly answer the question below and send your answer to cferrall@bf-law.com and you will win a rolling briefcase provided by the State Bar of Texas.

Which Texas city claims to have held the first Thanksgiving in North America?



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of

The Honorable Matthew J. Kacsmaryk

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS

WEDNESDAY, NOVEMBER 20, 2019
3:00 PM

J. Marvin Jones Federal Building and
Mary Lou Robinson United States Courthouse
First Floor Courtroom
205 SE 5th Avenue
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Reception Immediately Following

Please RSVP by November 4
at <https://www.research.net/r/MK-AMA>

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YOUR BAR EVENTS - NOVEMBER 2019

| S | M | T | W | T | F | S |
|----|----|----|---|--|----|----|
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 Swearing-In Ceremony 7th Court of Appeals 4:00 pm | 7 | 8 | 9 |
| | | | Nov. 6-8 – Advanced Family Law, Eagle Center Training Room | | | |
| 10 | 11 | 12 | 13 | 14 AABA Bar Luncheon, Embassy Suites | 15 | 16 |
| 17 | 18 | 19 | 20 Investiture Ceremony and Reception for Hon. Matthew Kacsmaryk, 3:00 pm. U.S. Courthouse | 21 | 22 | 23 |
| | | | Nov. 20-22 – Advanced Personal Injury Law | | | |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |