

# AMARILLO-LAW

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A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

## OCTOBER SPEAKER: CARA KENNEMER



**Cara Kennemer**

For our October bar luncheon, Cara Kennemer of Fort Worth will provide an update on Texas construction law. As construction has evolved into a specialty area of law, lawyers need to be aware of the pitfalls and issues that can lead to a malpractice claim or grievance. Cara's presentation, "Construction Law Traps for the Unwary," will discuss several unique aspects to construction law, including many of the recent legislative changes.

Cara is chair of Underwood Law Firm's Construction Section and

is Board Certified in Construction Law. Her practice focuses on all aspects of commercial and residential construction, including negotiation and preparation of contracts and advising clients on risk allocation, project management, and termination issues. She also litigates and arbitrates disputes involving design and construction errors, delay claims, building performance problems, lien and bond claims, and collection of construction funds. Her clients include owners, contractors, design professionals, subcontractors, and suppliers.

Cara is a graduate of the University of Texas and the SMU Dedman School of Law. She serves on the Council of the State Bar's Construction Law Section, the Board of the Construction Law Foundation, is a founding member of the State Bar Women's Construction Law Group. She has been recognized on Thompson Reuters' list of the Top 50 Women in Texas Construction Law as well as the Best Lawyers in America for Construction.

We hope you will join us in the Amarillo Club to hear Cara on October 14.

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*“That leads me to recall another bit of advice from Judge John T. Forbis ... ‘Quit at 5:00 and forget it.’”*  
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*“I can do great things with what I already have.”*  
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# **PRESIDENT'S PAGE**

By: Matt Sherwood

## **The More Things Change...**

Allow me to be the 147th person to mention how much things have changed the last year has been and/or mention how nice it is for things to "get back to normal." The number of articles written about this subject could fill the empty spaces in a law library. But it really is true. Things have changed, both good and bad, and things have started to get back to normal, both good and bad.

In September, we were able to get together as a group for the first time since March 2020. It made me realize how much I missed bar lunches. It was great to see several friends (and Joe Hinton) who I have not seen in person in well over a year. It appeared most of those in attendance agreed, as tables were filled with attorneys catching up with each other over a meal. It was "normal." But, at the same time, we were able to stream our function live over Zoom to allow attendees to watch our speaker (who led a wonderful discussion on the life of Kanye West, while still getting us ethics credit) online. It was a change.

I would encourage each of you to come to our October lunch. Not only will you see old friends, Liberty Lay, our AABA Vice President, is lining up some fantastic CLE speakers this year.

You know what else has changed? How we all look. Some of us got grayer (Wade Arnold). Some of us got balder (Patrick Weir). Some of us went full hippie (yours truly). I have had so many people not recognize me in the beard and Eddie Vedder hair that I had to update my AMA-LAW bio picture. Hopefully more of you will recognize me next time you see me out and about.

You know what else has felt normal? Football! I mean 75,000 people were able to come together in Razorback Stadium and watch Texas lose. Our local high schools are able to play in front of their friends and family. We NFL fans will get to watch our teams play in front of full stadiums where homefield advantage might finally return. Whether that will help my beloved Dallas Cowboys finally end its playoff drought is yet to be seen.

But, most importantly, the return of football means the return of fantasy football. It means the return of the autumn hobby of millions of people, which costs American

businesses somewhere between \$10 billion and \$25 billion per year. This mainstay of American culture was one of the major ways many of us were able to keep in constant contact during the pandemic. I know many firms in town have leagues. I know of several leagues that involve lawyers from multiple firms. One league in particular has found a way to assemble a group of over 30 people, including bankers, accountants, and lawyers from four firms. In what had to be the most fitting name for a 2020 league champion, this league was won by a team called Stinky Dirty Nasty.

So, whether you are a fantasy football novice who drafts receivers in rounds 1 and 2, or whether you are a fantasy juggernaut like Stinky Dirty Nasty, welcome back the fall and (hopefully) the continued return of "normal."

## **AABA History Quiz**

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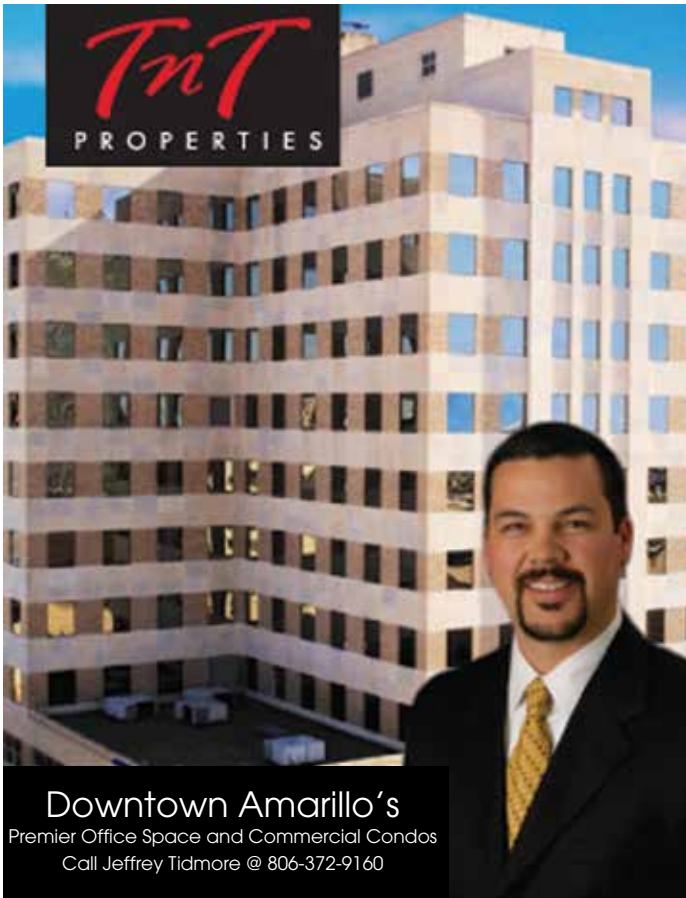
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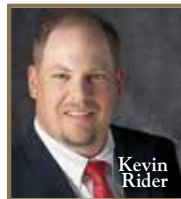
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# 7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

"But then I fooled around and fell in love ...." Though Elvin Bishop sang about falling for a woman, the underlying theme of "Fooled Around and Fell in Love" was encountering the unexpected. The unexpected occurred when this court reversed the termination order in *In the Interest of C.A.M.*, No. 07-21-00043-CV, 2021 Tex. App. LEXIS 6947 (Tex. App.--Amarillo August 17, 2021) on factual sufficiency grounds. Most every attorney who has ever urged that the evidence is either legally or factually insufficient to support a verdict discovered that such issues rarely meets with success. It seems that the standards of review used to assess them tend to favor an affirmance. Normally, there is some evidence supporting the decision, which makes it legally sufficient. And, if there is some evidence and given the deference accord the factfinder, then it is difficult to say that the factfinder erred in relying upon it when testing its decision under the factual sufficiency microscope. But, just as "mostly dead is slightly alive" (thanks Miracle Max), rarely ever doesn't mean never. And, in *C.A.M.*, there had to be "clear and convincing" evidence illustrating that termination of the parental relationship favored the child's best interests. There, not even the case worker could say that "it was in the children's best interests for them to not have contact with their mother". So, the unexpected happened, and we found the decision to terminate was not supported by factually sufficient evidence. By the way, finding the evidence factually insufficient does not mean the case is over. It just means the winner gets another trial, as illustrated in *C.A.M.*.

Don't be surprised, though, when you open the door during trial and your opponent walks through it to your detriment. That happened in *Womack v. State*, No. 07-19-00399-CR, 2021 Tex. App. LEXIS 6091 (Tex. App.--Amarillo July 29, 2021). The issue involved a video purporting to illustrate *Womack's* guilt. Its content was discussed by a State's witness, but the State did not offer the video into evidence. During closing argument, defense counsel questioned why the video was not offered by the State and inferred the reason to be because "it didn't show anything ...." That led the prosecutor to tell the jury that the video had been provided to defense counsel, thereby insinuating that if its content were meaningless then the defendant could have proved that by offering it.

Defense counsel objected. He believed the comment to be improper jury argument because it tended to foist the burden to produce evidence on the defendant. Irrespective of whether that was a viable ground for complaint, we held that defense counsel opened the door to or invited the State's response. So, the trial court did not err by allowing it to respond. Someone once said that in games of strategy, care must be taken when deciding what doors to open and leave closed. Well, maybe no one ever said that, but it does make sense. Be careful when reaching for that doorknob.

One thing you have to always expect is that the day ends. That leads me to recall another bit of advice from Judge John T. Forbis ... "Quit at 5:00 and forget it." Wise words. It's 5 o'clock somewhere; so, I quit ... for now.

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## AAYLA UPDATE

By Brittany K. Hinton

As French critic Jean-Baptiste Alphonse Karr wrote in January of 1849, “Plus ça change, plus c’est la même chose.” Roughly translated, the saying in English means, “The more things change, the more they stay the same.” As AAYLA continues to look forward to the 2021-2022 bar year, a similar question continues to arise: “Should we move forward with this event given the COVID-19 pandemic?”

In September, AAYLA answered the question affirmatively by hosting an exciting HAPPY hour event at Pondaseta Brewing Company on September 21, 2021 — generously sponsored by Happy State Bank. Both young lawyers (and slightly less-young lawyers) enjoyed this event. I am sure the free beer did not hurt! AAYLA hopes to find other opportunities to host lawyers in person in the safest way possible.

As for this month, all bar members will get the chance to help AAYLA answer the infamous question as it pertains to the 2022 Biennial Las Vegas CLE. AAYLA is

emailing all bar members a survey regarding the fate of the 2022 CLE. We strongly urge all local attorneys to complete the survey so that we can gauge whether to move forward with our plans to host this exciting event. If it moves forward, AAYLA hopes to match the attendance and excitement of the 2020 Biennial Las Vegas CLE planned by Thomas McMillian.

Speaking of Thomas McMillian, I would be remiss if I did not thank him for his service to both AAYLA and AABA. Thomas worked tirelessly to serve and better AAYLA, and I am confident he touched the life of most every attorney in the area, whether through his service to the bar or in his professional dealings. It is always a sad occasion to lose a local attorney to the glamor of the “big city,” but it is especially sad to lose someone who has served and improved our local bar so well. Thank you for your service, Thomas. I know I speak for all local lawyers when I say we will miss you.

## YOUNG LAWYER OF THE MONTH: DOLPH WENZEL



**Dolph Wenzel**

Dolph Wenzel is an Associate at McCarn & Weir, P.C. where he handles and aids in transactions and litigation in the fields of oil and gas, real estate, and business law. Dolph grew up in the Texas Hill Country among the rolling hills and live oak trees that covered his family’s ranch. Wanting to experience the different landscapes of Texas, he moved to the high plains of West Texas to attend Texas Tech University, which is where he discovered the beauty of a West Texas sunrise, but also experienced his first of many sandstorms. Regardless, he quickly fell in love with the 806.

Dolph majored in International Business and Management with a minor in German while attending Texas Tech. Prior to beginning his junior year, he took the opportunity to study German abroad in Salzburg, Austria. With graduation approaching quickly, Dolph decided to pursue a law degree and MBA.

In the fall of 2017, Dolph made the long move across

campus from the Rawls College of Business to the Texas Tech School of Law. In law school, he was a founding board member of the Tech Law Agricultural Law Association, was elected the American Bar Association Junior Representative, and was elected the 3L Class President. He also worked for the Lubbock County District Attorney Office in the Juvenile-Criminal Division. During the summer of 2019, Dolph clerked for McCarn & Weir. After enduring the ever-moving target that was the July 2020 Texas Bar Exam, Dolph joined M&W in the Fall of 2020.

Dolph and his wife, Regan, enjoy traveling, being outdoors, and spending time with their two dogs, Sarge and Maddi. When not traveling, Dolph and Regan spend most of their free time hunting and working with their parents on their ranches.



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## Amarillo to Observe Tenth Red Mass



**Justice Eva Guzman**

All judges of the Texas Panhandle will be the guests of honor at the Tenth Red Mass Ceremony on Tuesday, October 19, 2021, at 6:30 p.m. at St. Mary's Cathedral, 1200 S. Washington in Amarillo. We invite, and encourage, all attorneys to attend. Sponsored by the Roman Catholic Diocese of Amarillo, the Red Mass is a centuries-old

tradition that marks the official opening of the judicial year. The service promotes the unity of the judiciary and the legal profession and invokes the blessing of the Holy Spirit upon the judicial system, the judiciary and those whose duty it is to judge, teach and resolve legal matters in the pursuit of justice. Because the color red is traditionally symbolic of the Holy Spirit, the liturgy has become known as "the Red Mass."

A Red Mass is held each October in Washington, D.C., to mark the opening of the term of the United States Supreme Court. Many dioceses in the country, therefore, celebrate their Red Mass in October as well. The Red Mass is open to all judges, lawyers, public officials, law enforcement and anyone in the community with a concern for justice, regardless of religious background. We welcome everyone into the church for this very special Mass celebration.

Bishop Patrick J. Zurek of Amarillo will serve as principal celebrant, and the Mass will be followed by a keynote address from former Texas Supreme Court Justice Eva Guzman, who served for over a decade on the Texas Supreme Court and is currently a candidate for Texas Attorney General. Justice Guzman grew up in Houston and is one of seven children of Mexican immigrant parents. She earned her undergraduate degree at University of Houston, law degree at South Texas College of Law, and LLM from Duke University School of Law. Justice Guzman has served at three levels of the Texas judiciary: the 309th District Court in Harris County, the Houston-based Fourteenth Court of Appeals, and ultimately the Texas Supreme Court. It is the pleasure of the Amarillo Area Bar Association and the Diocese of Amarillo to welcome Justice Guzman to Amarillo, where she has known so many professional colleagues and friends for years!

A reception with heavy hors d'oeuvres, beer and wine will follow the Mass and keynote address. There is also a Teen Corner, where teenagers and children can enjoy Chick-Fil-A. Dress attire for the Red Mass is business attire, and everyone is encouraged to wear red accents.

A committee of members from the Amarillo Area Bar Association has been working with Bishop Zurek to plan this event. For additional information, please contact Brad Howard at 345-6310 or bhoward@bf-law.com.

## The CorNORMaL

It was February 9, 2020, I was onboard a Southwest Airlines Boeing 737-7H4 descending into Amarillo, headed home from the AAYLA biennial Las Vegas CLE. I was President that year and in charge of the CLE. In a "Vegas year" you can breathe a little after the event is over. Sure, there are a few more events left in the bar year, but that's the "top of the hill" in even-numbered years. As the flight attendant came by and I finished my beer, I had no clue that this would be the last plane ride, and my last trip out of the State of Texas, for 9 months and 17 days. That's the longest I've gone without getting on a plane since I flew to Lubbock for freshman orientation at Texas Tech 20 years ago!

A little over a month later, on March 12, 2020, I was sitting at 6 Car Brewery downtown. A group of us played trivia there every Wednesday. I happened to be sitting in a seat close to a TV. The President came on and I read the captions as intercontinental travel. We knew then that things were about to change. As the Public Safety Legal Advisor for the City of Amarillo, I had a front row seat to all of the Executive Orders that followed. Things were shut down and I quickly found myself working from home. I've never been the "work from home" type. In law school, I always had to go to the library to study. If I needed to work after hours, I went up to the office. I didn't even have an office area at my house, so I worked from the dining room table for a week. That was when I realized that things had to change.

My "TV room" or "man cave" had never really been set up the way I wanted it. I took this opportunity to really get it right. As we all remember, getting "stuff" during the height of the pandemic (and still today) could be challenging. I thought "let's see what I can do with what I've got." Dustin had a writing table and a nice chair that made a great desk and fit just perfectly. I ended up with a great workspace and a great place to relax in the evenings just using what we had. My first instinct when I embark on a project is to go "get something." The pandemic taught me that I can do great things with what I already have.

Anybody who knows me will tell you that I am a VERY social person. They'll also tell you that I fancy myself an amateur beer sommelier. During the pandemic, going out to a brewery with friends just wasn't an option. Enter the "Zoom happy hour." I found that it was not only a great way to keep in touch with friends in town, but I found that since I was pretty much homebound and had time, I was able to reconnect with out-of-town friends that I hadn't seen or talked to in a while. I also did my best to support our local businesses. I'm usually a German import kind of guy (many folks will tell you that extends to more than just beer with me), but I thought it was important to support our local businesses during this time, so I made growler refills runs and bought 6 packs to go from our local breweries. It really made me appreciate all we have here in Amarillo. This was another good lesson from the pandemic: seeing people in person is great, but you can still stay connected to people, even if you can't be there.

9 months and 17 days later, I was headed to Raleigh, NC on a United Airlines Airbus A319. Things had definitely changed! Luckily, United had brought coffee back the week before! As we head down the home stretch of 2021, things are changing faster than ever. Dustin and I have both accepted jobs in the Dallas/Fort Worth area, and while I'm looking forward to this next chapter, I'm sad to leave the place and the legal community that took me in, fresh out of Law School, almost 13 years ago. The support I received here allowed me to spread my wings and soar. I'll always look back on Amarillo fondly and be grateful for the time I spend here. This isn't "goodbye," it's "see y'all later!"



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## YOUR BAR EVENTS - OCTOBER 2021

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			Advanced Criminal Law CLE, 2nd floor training room, Eagle Center			
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