

AAYLA-LAW



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A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

APRIL SPEAKER: JUDGE EMILY MISKEL



Judge Emily Miskel

Judge Emily Miskel is our speaker for the April 2021 meeting. Judge Miskel has served as judge of the 470th district court of Collin County, Texas since the court was created in 2015. In 2020, she began serving as the Local Administrative District Judge of Collin County, and has coordinated the courts' COVID-19 response, keeping courts running during the pandemic. Her topic will be *I Heard it Through the Grapevine: eDiscovery, Direct Access, Social Media, and SCOTX.*

Judge Miskel received her law degree from Harvard Law School and is double board certified in Family Law and Child Welfare Law by the Texas Board of Legal Specialization. She graduated from Stanford University with a Bachelor of Science in Mechanical Engineering. She frequently speaks on legal technology topics such as electronic evidence, e-discovery, data theft, interception of communications, and online impersonation. She also held the first virtual bench trial in Texas and the first virtual jury trial in the world.

Judge Miskel serves on the Texas Judicial Council, the policy-making body for the state judiciary, and on the Supreme Court Advisory Committee. She also serves on the Pattern Jury Charge Oversight Committee and the Computer & Technology Law Council for the State Bar of Texas. In 2020, United States Supreme Court Chief Justice Roberts presented her with the William H. Rehnquist Award for Judicial Excellence from the National Center for State Courts.

Please join us to welcome Judge Miskel and hear her presentation on Thursday, April 8th at noon via Zoom.

“Many dreams have been fulfilled, and there are more to come”

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“Maybe that is what makes trial judges good high-wire performers because they often walk fine lines.”

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PRESIDENT'S PAGE

By: Jennie Knapp

Perhaps it is cliché to think about “hope” in the springtime, but it has been on my mind, nonetheless. And specifically, the difference between hope and delayed hope. The Bible (Proverbs 13:12) says that hope deferred makes a heart sick. This is a scripture that I have been dwelling on for a while personally, but I suspect that there are quite a few others amongst us who find themselves dealing with disappointments, disillusionments, and lost or forgotten hope given the bleak parts of the past year. But that verse continues with “a dream fulfilled is a tree of life.” Dreams are being fulfilled. Right now, the sense of hope is almost palpable in the coming of spring, vaccinations, lifted government restrictions, and reminders of the promises of God. Many dreams have been fulfilled, and there are more to come. (Some of us add the new Potter County Courthouse to this list!)

Included among the new and good about this year is the slate of new officers and directors for the AABA:

- President: Matt Sherwood**
- President-Elect: Liberty Lay**
- Vice-President: Thomas McMillian**
- Secretary/Treasurer: Tyler Topper**
- Directors with Terms Expiring 2023:**
 - Morgan Tilley**
 - Alysia Cordova**
 - Courtney Miller**

I hope to see you all as we vote on these officers and directors on April 8, 2021 at our regularly scheduled zoom meeting.

We had so hoped to have a Spring Institute, but unfortunately the stars have not aligned for May. To make up for the past (now two) missed institutes, we are planning to break with tradition and have a Fall Institute. We have talked with some excited guest speakers who would be happy to travel to Amarillo (or anywhere else, for that matter), and are working to coordinate dates with them.

Meanwhile, see you on April 8th.

AABF Scholarship Announcement

The Amarillo Area Bar Foundation will be awarding \$2,500 scholarships for the 2021-2022 academic year. Applicants must be (1) enrolled in or accepted for admittance to an ABA accredited law school, and (2) born in, raised in, or currently reside in one the 26 counties of the Texas Panhandle. Once recipients of the scholarships are selected by the scholarship committee of the Foundation, the applications of those recipients are provided to the Coppedge family for review and a determination on who should receive the scholarship designated as the Chris Coppedge Memorial Scholarship. For more information on eligibility and an application, visit amarillobar.org and click on the Amarillo Area Bar Foundation tab or call Janet Byars at (806) 371-7226. The deadline to apply is May 14, 2021, 5:00 p.m.

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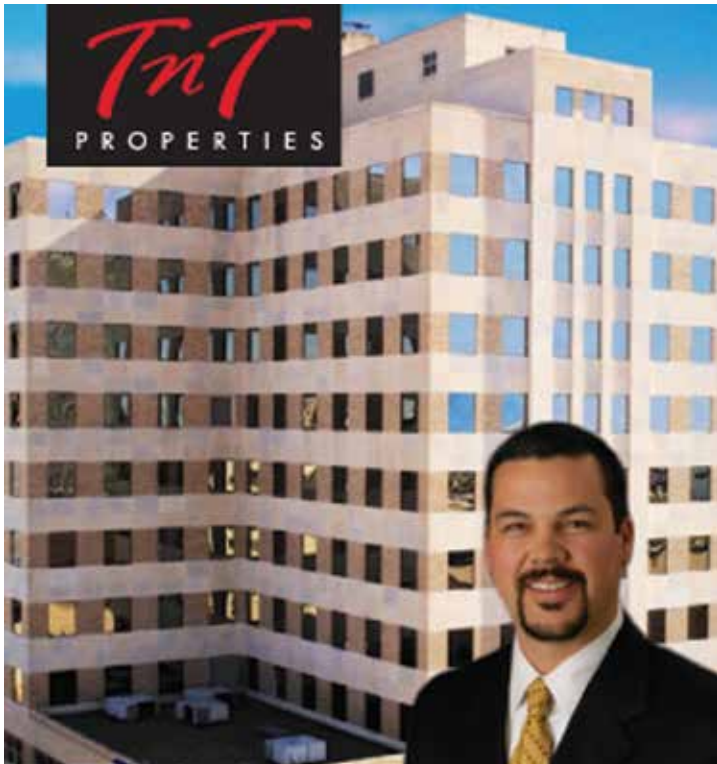
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7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

“Long as I remember, the rain been comin’ down.” Maybe John and his Clearwater Revival missed coming to West Texas. But, there’s no dry spell going on inside the county courthouse. Jury trials are resuming, and appeals will be rising. Work has its perks.

I will say that you don’t want to get caught out in the rain by forgetting to talk about harm in your appellate analysis. Yeah, the Court of Criminal Appeals said you don’t have to in criminal appeals, but it is part of the appellant’s/ complainant’s burden in a civil one. And, because the appellant did not address harm when complaining about the admission of evidence in *Aguilar v. Wells Fargo Bank, N.A.*, No. 07-20-00036-CV, 2021 Tex. App. LEXIS 718 (Tex. App.—Amarillo Jan. 29, 2011, no pet. h.) (mem. op.), we overruled the issue. As an aside, let me allude to the request (in *Aguilar*) for \$5,000 as contingent appellate attorney’s fees if successful in the intermediate court of appeals and \$5,000 if successful in the Supreme Court. Trial attorneys who do little appellate work may want to talk to an appellate attorney beforehand about the time expended in and costs of an appeal . . . just sayin’.

Pop quiz: do you need to preserve for appellate review a complaint about the trial court commenting on the weight of the evidence during a criminal trial??? Find the answer in *Quesada-Diaz v. State*, No. 07-20-00163-CR, 2021 Tex. App. LEXIS 578 (Tex. App.—Amarillo Jan. 26, 2021, no pet. h.) (mem. op., not designated for publication). Okay, okay, the answer is “nope.” And, though a trial court should eschew (I paid 25 cents in college to learn what that meant) comments on the weight of the evidence, they can comment on the admissibility of evidence. As we noted in *Quesada-Diaz*, giving trial counsel a mini-class on laying the predicate for admitting hearsay evidence did not imply approval of his argument, disbelief in anyone’s position, or otherwise diminish the credibility of a party’s approach to the case. If it did, the lesson may have been an impermissible comment. Maybe that is what makes trial judges good high-wire performers because they often walk fine lines.

Segue time from mine to the fingers to the vault of Judge Woodburn of the 108th District Court. He recently had occasion to converse with an Asian gentleman in court appearing pro se (if you don’t know what that means, go buy a Black’s Law Dictionary). For the sake of protecting the innocent, the judge “will call him Mi Song Yung. Mr. Yung had applied for a name change, but spoke only broken English. Although [he] was able to articulate the name he had chosen, that being Ho Ming, that seemed

to be the extent of the testimony he intended to provide. I reviewed his pleadings and discovered they were quite sparse on the required documentation; however, out of curiosity, I inquired why he wanted to change his name. He responded, ‘That name not lucky.’ Now I was curious! ‘Why isn’t that name lucky?’ I asked. ‘Got convicted under that name,’ explained Mr. Yung. Wrong answer; petition failed.” I guess Judge Woodburn rained on Mr. Yung’s parade.

The Austin move to redistrict courts of appeals continues. While much is going on behind the scenes as I write this in early March, maybe some actual plan will see the light of day by the time you read it. Proposals by those outside the legislature generally merge the non-mega-urban courts of appeal into the mega-urban ones. Adopting one of them would likely result in the loss of judges being elected from outside the I-35 corridor. Not good for the ability of us “rural” folk to elect judges from our communities. That leaves me to ask Mr. Fogarty’s question about “who’ll stop the rain.”

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AAYLA UPDATE

By Richard Biggs

One of the Amarillo Area Young Lawyers Association's stated goals is to foster relationships between young lawyers and the non-young lawyers. Now that a new "normal" is approaching, and my personal fear of accidentally infecting vulnerable elders has subsided, I figured it would be a good month to discuss mentoring relationships between young lawyers and the not-so-young ones.

In researching this article, I stumbled upon a Harvard journal article about mentoring young professionals. It seemed like a good place to start. According to the people who are much smarter than me, mentorship can be one of the first things to go when a mentor's workload becomes too demanding. I've noticed the same phenomenon. However, the Harvard® solution was to shift more of the work load onto the mentee and to meticulously guard the mentor's time. Like Christopher Columbus and the Americas, Harvard has "discovered" the dynamic that has existed between young attorneys and their more senior colleagues since the invention of the law.

And so my research quest continued. According to

Bloomberg, the best way to mentor young lawyers is to give them a bunch of make-work that 99% of clients would never pay for. A New York Times article described how one judge would treat her clerks like close family members, which probably works well in some situations, and not-so-well in others.

After some research, I can assure my reader that the literature lacks any meaningful consensus. I suspect this is because mentoring is such a personal topic; we all build relationships differently. But there are some common themes. Communication is always paramount to building a successful professional relationship. As part of this communication, both sides need to set reasonable boundaries and expectations.

Other than that, I haven't seen any universally applicable rules for being a mentor or mentee. This is good news, because that means anyone can do it. And because young lawyers are no longer asymptomatic threats-in-suits, I encourage everyone to try to work again towards building mentoring relationships.



Jessica Lilierose

YOUNG LAWYER OF THE MONTH: JESSICA LILIEROSE

Jessica Lilierose is an Associate at McCarn & Weir where she practices in oil & gas and real estate transactions and litigation. Jessica grew up in Denver, Colorado. After vowing to never live in a cold climate again, she moved to Houston, Texas to attend Rice University, which is where she gained an appreciation of the Lone Star State. At Rice, Jessica majored in Psychology with concentrations in Economics and Business. She took the opportunity to study International Business abroad for a semester in Copenhagen, Denmark before graduating in 2014. After choosing to pursue a career in law shortly before graduation, she took a gap year before attending law school, spending the year in the rewarding yet challenging position of a teacher.

Deciding to endure the cold once more, Jessica moved to Chicago, Illinois to attend law school at Northwestern University. In law school, she was on the boards of the Real Property, Trusts & Estates and Tax Law societies, and the Journal of International Law & Business. She also volunteered at a legal services clinic helping clients experiencing foreclosure. She spent her first summer interning with the IRS and her second summer clerking in Amarillo, where she could return to Texas and be closer to nearby family. She joined McCarn & Weir after graduating in 2018.

Jessica enjoys spending her free time travelling and being outdoors. She enjoys watching the Denver Broncos, along with too much reality TV, especially in the past year.

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PENULTIMATE ARTICLE

By James Wester, State Bar of Texas District 13 Director



James Wester

We all reflect on small lessons we have learned as lawyers. In about 1987, Ed Hill, one of my mentors at Underwood, referred to a brief or pleading we were drafting as being the “peni-penultimate” version of it. I had absolutely no idea what he meant. Since Google did not exist, I turned to the dictionary. I am still question whether “peni-penultimate” is technically a word, but I never argued that point with Ed as Ed was a walking dictionary. I discovered that “penultimate” meant “next to last” and I extrapolated Ed’s term to guess that Ed was telling me our draft was the “next to the next to last”. After working with Ed for a few years and repeatedly revising drafts, I concluded that getting to the “peni-penultimate” version with Ed was a victory.

By the time you read this article, you should have received multiple communications asking you to vote in the SBOT President-Elect race. Also, my term as SBOT Director is ending in June and you will have the opportunity to vote for my replacement. The elections will take place April 1-30.

Due to COVID-19 and like so many other impacts on our lives, the President-Elect Candidates, Laura Gibson and Sara Dysart, were not able to make a tour in Amarillo, shake hands and distribute their brochures. I suspect some of you know one or both candidates. If you Zoomed in for the AABA February meeting, you had the opportunity to hear Laura Gibson present her vision for the SBOT. If you want to take the time to get to know the candidates, there is a webpage at the SBOT website, texasbar.com/elections, that will provide you with a video by each, a link to their websites, their brochures and each of their letters of interest. Please take the time to vote for the candidate of your choice. Like the 2021 Rules Vote, it remains important to our self-governance that you vote for the person that you want to lead the SBOT as President in 2022-23.

In addition, you have the chance to vote for your new District 13 Director who will take office in June, 2021 at the Annual Meeting. At the time of my writing this, Audie Sciumbato is the only person that filed the necessary paperwork to serve as the District 13 Director. I have full confidence that Audie will be a great representative for our District for the next 3 years. Audie is the

only candidate, but I encourage you to take the few seconds that it takes to cast your vote of confidence in him and acknowledge his willingness to serve. I know I will.

After the tumultuous start to the 2020-21 Bar Year and getting input from a number of you, it is clear that many of you do care about who gets elected as your SBOT President-Elect and then succeeds to being President. Take this opportunity to cast your vote and make your voice heard. Choosing your leadership and protecting our ability to be self-governed is important.

The May version of AMA-LAW will be the last one this Spring before our Summer break and this is my penultimate article. My article next month will be my farewell as your District 13 Director. Thank you for the opportunity to serve!

The views expressed in this article are mine and not necessarily those of the State Bar of Texas. If I can be of assistance, please feel free to contact me at James. Wester@uwlaw.com or 806-379-0354.

AABA History Quiz

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When was the Potter County Courthouse listed on the National Register of Historic Places?





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YOUR BAR EVENTS - APRIL 2021

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4	5	6	7	AABA Zoom Meeting at Noon 8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	