

# AAMA-LAW

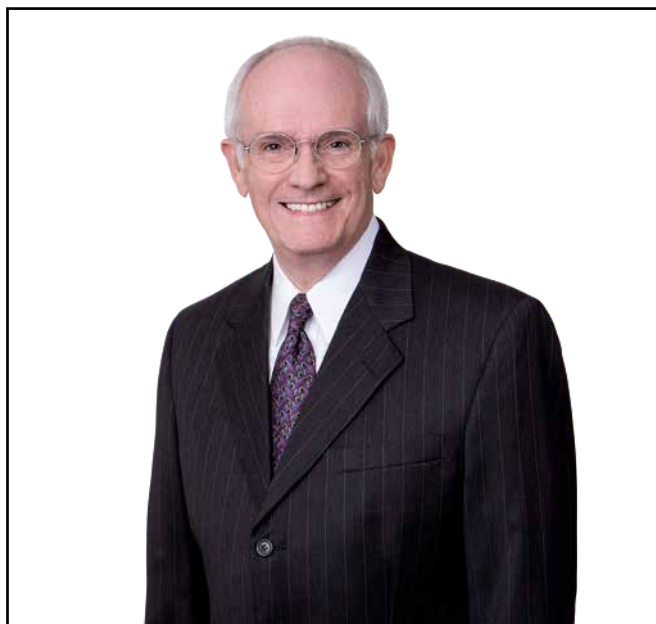


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## OCTOBER SPEAKER: CHARLES SKIP WATSON



Charles Skip Watson is our speaker for the October AABA meeting. Mr. Watson is a shareholder at Greenberg Traurig in Austin, Texas, where he focuses his practice in appellate law and energy litigation. Mr. Watson is board certified in Civil Appellate Law and Civil Trial Law by the Texas Board of Legal Specialization. Mr. Watson is also one of 300 national appellate attorneys elected fellows in the American Academy of Appellate Lawyers. In 2019 he received the Justice Jack Pope Award for Professionalism from the Chief

Justice of the Texas Supreme Court. For over two decades he has advised the Texas Supreme Court as an appointed member of its 50-member Rules Advisory Committee. He is a previous Chair of the Appellate Section of the State Bar of Texas and has served as the Court Director for the Advanced Civil Trial Course and Advanced Appellate Practice Course.

Mr. Watson's CLE presentation is "Insights in Practice Before the Texas Supreme Court." We are excited to have Mr. Watson join us at noon on October 8, 2020 via Zoom.

*“You know, juries usually do get it right.”*

-Page 4

*“[T]here is something to be said for in-person communication”*

-Page 5

## CONTENTS

President's Page	2
Seventh Court of Appeals	4
AAYLA Update	5
Young Lawyer of the Month	8



# **PRESIDENT'S PAGE**

By: Jennie Knapp

Happily, our first Virtual AABA meeting and CLE presentation proceeded without any technical glitches. Thanks to many who signed on – we loved getting to see everyone, even on a screen. A special thanks to Judge Curt Brancheau for his perspective on navigating judicial proceedings in this current climate.

But there was one glaring oversight: I failed to recognize Joby Mills and the great job that he did as President of our organization last year. It was not an easy year to be a leader of any group, but Joby met the challenges with his characteristic jovial nature, good sense, and volunteerism. In several years of working with Joby doing bar work, I have never once seen him upset or even just “okay.” He’s always good for a joke, and (as I really appreciate) he will humor you by laughing at yours no matter how bad they are. If you haven’t had the chance to get to know Joby, you should. He will make your day better. The AABA certainly has been made better by his service. Joby is often the first one to volunteer to take on tasks that most people

shy away from, and he accomplishes them humbly. Thank you, Joby, for your dedication to the profession and lifting our spirits in a difficult year. (Your gift is in the mail. Literally, not figuratively.)

Another minor point about virtual meetings: if you have an announcement of the sort that would normally be made at the monthly luncheon, please let me (jennie.knapp@uwlaw.com) or Janet Byers (director@amarillobar.org) know so that we can make that announcement for you. There is not an efficient way to “call on” people or “go around the room” virtually. One of the many things that we will be happy to get back to when in-person meetings resume. For now, we will make do.

As you may have guessed, we will be proceeding with another virtual meeting in October. Watch your emails for the Zoom link (and email Janet Beyers at director@amarillobar.org if you are not getting AABA emails). Also, check your emails for other updates on events throughout the fall.

Stay well and wash your hands.



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# 7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

One motion for summary judgment. Two aspects to the motion: traditional and no-evidence. And, most importantly, no response to either aspect from the non-movant plaintiff. Those were the circumstances in *Hawes v. Link Ministries, Inc.*, No. 07-18-00407-CV, 2020 Tex. App. LEXIS 6465 (Tex. App.—Amarillo Aug. 13, 2020, no pet. h.) (mem. op.), and we had to decide, among other things, what evidence could be considered in assessing whether the trial court erred in granting the no-evidence aspect of the motion. As we generally know, the non-movant in a no-evidence motion setting has the burden to present some evidence to support the elements of his claim. The movant need not do anything. But, what if the movant presents evidence to support his traditional motion and that evidence creates fact issues on the very elements being attacked in the no-evidence part of the motion? Can we consider it when reviewing the trial court’s decision? The three judges on the panel had three different answers. They also voiced those answers in three different opinions relying on different authorities. Two of us decided that it was appropriate to consider such evidence but did so for different reasons. One of us said that only the evidence proffered by the non-movant could be considered. Well, if you’re thinking about now, “Well, that’s as clear as mud,” you ain’t alone. Little about the law is black and white, and too often are litigants and judges left to walk a bit blinded until the Supreme Court comes to wash away the muck. Maybe it will turn its hose on this topic. In the meantime, those litigants wanting to combine traditional and no-evidence motions should make sure that the evidence presented to support the former does not defeat the latter. . . . Oh, and, its best if you make it a practice to respond to summary judgment motions.

Picture this . . . you’re driving through West Texas with your spouse and infant child in tow, the child is in the throes of “intestinal disfunction,” and only one diaper remains. Needing to find the nearest store fast, you drive likewise . . . fast. Now, segue to a courtroom in Claude, Texas, wherein you sit awaiting trial by a justice of the peace named “Shotgun” Wertenberger. If your name is either James Doores or Oth or Dee Miller, then this scenario should be ringing some bells by now. Oth and Dee came down from the Potter County D.A.’s office to prosecute James. A sure conviction, you ask yourself. After all, James was speeding, and the county was rural. But he wanted a jury trial and, in preparing to defend himself, James (and his attorney Max Sherman) discovered that the speed limit was recently changed and raised. Being amenable to affording the accused a trial

by his peers, the Honorable “Shotgun” directed his bailiff to gather a venire. Heeding the order, the bailiff walked out the courthouse door, yelled across the street to patrons of a local drug store, and enticed six to fill the jury box. That done, the trial started. James explained his predicament involving “intestinal disfunction” and vanishing diapers. But his hole card was the change in speed limit. As soon as it was broached, the prosecutors Miller shot up and moved to exclude the information. The honorable justice of the peace wasted no time in saying: “I second that motion.” But, in the end, neither the second from the honorable court nor the speed limit change mattered. After acquitting James in less than a minute, jurors could be heard wondering whether the prosecutors knew what it was like having infant children. You know, juries usually do get it right.

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# AAYLA UPDATE

By Richard Biggs

Summer is finally over in Amarillo. It's that wonderful season when students go back to school, the summer heat subsides, and tree leaves transition into their beautiful fall colors for a few seconds before the relentless Panhandle wind carries them off.

AAYLA is celebrating the season by holding our first outdoor, socially distant happy hour, which is set to occur in between this fine publication's submission deadline and its publication date. I'm sure it was a tremendous event, with a large yet socially-responsible turnout. My thanks go out to our committee – and Matthew Merriott in particular – for working through the complicated logistics of having in-person events.

As the reader may have gathered, AAYLA has resumed with in-person meetings. Our board is holding its 15 to 25-person meetings spread out across an auditorium designed for 200+. This requires lots of shouting, but the officers voted and found shouting

preferable to working over Zoom. While we still have a Zoom setup for those that can't attend or don't feel comfortable doing so, there is something to be said for in-person communication. I look forward to the day when arranging a small meeting isn't so dang complicated.

Finally and most notably, AAYLA sends its congratulations to Honorable Titiana Frausto for her appointment to the 181st Judicial District bench. Hon. Frausto was an AAYLA board member until quite recently, and we couldn't be more thrilled with Governor Abbott's selection. Hon. Frausto will be an excellent judge for Potter and Randall counties.

Should another vacancy open up, AAYLA has numerous other current and freshly aged-out members who would also be excellent picks. Governor Abbott: you can save some time by ditching the selection committee and giving us a call!



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**SEARCH FOR WILL**

If you have information regarding the Last Will and Testament of Harold Richard Snell, please contact attorney Jeffrey S. Eggleston, at 806.372-5800 or jeff@egglestonlaw.com.

Dr. Snell was born in 1945 and he lived in Amarillo several years before his death on August 4, 2020.

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# DESIGNATING A CUSTODIAN ATTORNEY

*By James Wester, State Bar of Texas District 13 Director*



**James Wester**

What happens to the clients when a lawyer dies or has an incapacitating accident that suddenly makes the lawyer unable to practice law or even communicate? What, if anything, can the lawyer's family do? While law firms have the ability to deal with that situation, there are many lawyers that are unprepared for such an event. Each of us knows or has heard horror stories of the fallout from such an event. "When a lawyer suddenly dies or becomes incapacitated without a succession plan, it can create chaos for clients, firm employees, and family members," said Greg Sampson, Co-Chair of the State Bar of Texas Succession Planning Workgroup.

Recognizing the problem, the State Bar has developed a solution. The custodian attorney program is easy to implement and planning for an unforeseen event is time well spent. The program allows you to appoint a "custodian attorney" that is in a position to handle or close a practice in the event of a lawyer's death or sudden cessation of practice.

The custodian attorney is given the authority to:

- Obtain access to client files;
- Provide notice to the lawyer's clients that the lawyer has ceased practicing;
- Secure client direction on where and to whom to send the file; and
- Return any client property.

As a lawyer, think about the legal issues that could arise if no one has the legal authority to handle the items above. While horrible for you if such an event occurs, your family, clients, staff and others are the ones left to deal with the aftermath. Realizing that we are all busy and the State Bar has made the process very simple and efficient, it's well worth taking the time to address this

issue. "There is not any easier process anywhere in the country," said Laura Gibson, Co-Chair of the Succession Planning Workgroup.

Here is all that you need to do:

- Find a lawyer who is willing to serve as your custodian attorney;
- Log in to My Bar Page on the State Bar website;
- Scroll to the tab "Succession" (next to "Your MCLE");
- Click on "Add Custodian Now" (the electronic designation form);
- Fill in the information of your custodian attorney and click "Submit"; and
- Click "Affirm" to affirm your designation

If the above seems too good to be true, you can learn more about designating a custodian by going to [texasbar.com/succession](http://texasbar.com/succession) and clicking on the tab titled "Designating a Custodian—Instructions."

Your custodian attorney will be notified by email and he or she will affirm or decline the designation. Do unto others as you would have them do unto you – expect that you will reciprocate as the custodian attorney for your custodian attorney's practice. You can also select an alternative custodian attorney. You can change your designations at any time. There is a short video explaining the process, which can be found at [texasbar.com/succession/successionplanning.mp4](http://texasbar.com/succession/successionplanning.mp4).

Note that by designating a custodian attorney, you are not designating an attorney to take over your practice. You are simply designating an attorney who will contact your clients, encourage your clients to obtain legal counsel, and ensure that client files and property are returned.

I know some of you have an informal agreement with another attorney and I encourage you to take the few minutes to formally designate the attorney as your custodian and vice versa. The State Bar believes the custodian attorney program pertaining to succession planning and emergency preparedness will make a real difference in the practices of thousands of lawyers, while also benefiting their families, their clients, and the judicial system.

Special thanks on this effort go to Immediate Past President Randy Sorrels, the members of the Succession Planning Workgroup, and the State Bar Staff including the Information Technology Team.

As each of us thinks about our loved ones as we update our Last Will, it is a time to also think about and update your designated Custodian Attorney(s).

If I can be of assistance, please feel free to contact me at [James.Wester@uwlaw.com](mailto:James.Wester@uwlaw.com) or 806-379-0354.





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**Eric Vickers**

## YOUNG LAWYER OF THE MONTH: **ERIC VICKERS**

Eric Vickers was born and raised in Abilene, Texas. After graduating from Abilene Cooper High School, he attended Abilene Christian University. While in college, Eric joined the Abilene Police Department. Eric successfully completed the Abilene Police Academy and began a career in law enforcement. For the last half of Eric's career, he served as a major crimes detective and crisis negotiator on the SWAT team. After serving more than fifteen years, Eric honorably retired from law enforcement to pursue his dream of becoming an attorney.

Eric moved to Waco to study law at Baylor School of Law. While in law school, Eric competed and won awards in moot court, client counseling, and mock trial competitions. Eric participated in Baylor's trial advocacy programs in St. Andrews, Scotland and was recognized as the top student in the Advanced School of the Trial. Eric also interned for United States Magistrate Judge Jeffrey C. Manske and United States District Judge Alan Albright. Eric graduated

from Baylor Law cum laude in February 2020.

Eric's time serving as an intern in the Waco Division federal courts created a desire to serve as a judicial law clerk after graduation. Eric applied for and was selected to serve as a judicial law clerk for the Honorable Matthew Kacsmayk in Amarillo. Eric begins his clerkship in January of 2021.

In March 2020, Eric joined Sprouse Shrader Smith, where he works as a litigation associate and mediator. Prior to joining Sprouse Shrader Smith, Eric worked as a litigation clerk for Pakis, Giotes, Page, & Burleson in Waco, Texas.

While not in the office, Eric spends time with his wife, Hannah, three children, Mason, Sawyer, and Logan, and goldendoodle, Winston. Eric and Hannah spend their "free time" attending football games, cross country meets, violin recitals, and coaching his daughter's soccer team. Eric his family attend University Church of Christ in Canyon.