

AAYLA-LAW

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A PUBLICATION OF THE AMARILLO AREA BAR ASSOCIATION

MARCH SPEAKERS: AMANDA TAYLOR AND MAITREYA TOMLINSON



Amanda Taylor



Maitreya Tomlinson

Make plans to join us at the March 10 bar luncheon for an informative presentation on the “Top 10 Mistakes in Trial Court,” brought to us by Austin attorneys Amanda Taylor and Maitreya Tomlinson. The discussion will cover common trial errors and tips to improve trial lawyers’ ability to try a case without risk of reversal.

Amanda serves as the practice group leader for the appellate practice at Bacross the state, with a practice that focuses on complex civil disputes involving contracts, business entities, employment, insurance, real property, and more. She is board-certified in civil appellate law and has been recognized among the Best Lawyers in America and as a Texas Super Lawyer. Amanda also serves a member of the Texas State

Bar Grievance Committee. She is a graduate of Vanderbilt University and Baylor Law School.

Maitreya is the managing member at the Tomlinson Firm, PLLC, a boutique appellate firm that helps clients throughout every stage of litigation and post-litigation matters. As a board-certified civil appellate attorney, he helps trial counsel by assisting with legal issues, briefing, and positioning cases for successful appeals. His appellate experience ranges from commercial matters to family law. Maitreya has a professional background in banking, securities, and real estate. He is a graduate of the George Washington University and Southern Methodist University Dedman School of Law.

“I have found in my career that there are far more lawyers who adhere to the principles of honesty, professionalism, and integrity than those who do not.” – Page 2

“Yep, Mars is still around, and he enjoys his month. So, girl up as the games begin.” – Page 4

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PRESIDENT'S PAGE

By: Matt Sherwood

Keep Lawyering Civil

One of the questions I am asked more than any other by our non-lawyer friends is what it is like to do our job—especially for those of us in the litigation realm. To the outside world (and to some clients), they assume that because we fight each other during negotiations, pleadings, letters, hearings, and trials, it must be like that all the time.

My favorite way to explain the profession to others is to reference an old Looney Tunes cartoon from the 1950s. The cartoon follows Ralph Wolf and Sam Sheepdog as they drive to work as friends, walk to the punch clock as friends, and then clock in to start work. Despite their friendly demeanor leading up to the workday, once they both clock in, it is a battle all day, with Ralph doing what wolves do (trying to eat sheep) and Sam doing what sheepdogs do (fighting off the wolves). Neither side pulls any punches as they both try with all their might to defeat their foe. But, once the day is over and it is time to stop fighting, Ralph and Sam clock out and return to their professional and friendly manner with each other.

I find this to be a perfect metaphor to the practice of law. We are hired by our respective clients to represent their interests fervently and aggressively against another lawyer opponent. Things get tense. Things get heated. Things get stressful. These emotions that can lead to negative situations without lawyers who have a sense of professionalism and mutual respect.

A recent real-life situation brought this to mind. After a fiery basketball game between Michigan and Wisconsin, Michigan's coach, Juwan Howard, started an argument with Wisconsin's coaching staff and ended up slapping an opposing coach in the face. As the various sportswriters and talking heads across the country discussed the situation, some of the soft, weak-minded ones suggested that sports should do away with the post-game handshake because apparently it is too much to ask that adults be adults.

We should continue to push back against such feeble-minded thinking. We as a society should expect adults to be able to fervently disagree about a subject but continue to treat each other with respect and humanity. We as a profession can lead the way on this.

While we lawyers are often the target of any number of jests and jokes, more often than not these quips are unfair. I have found in my career that there are far more lawyers who adhere to the principles of honesty, professionalism, and integrity than those who do not. I find this to be particularly true of the

Texas Panhandle. I feel honored to do battle with so many quality lawyers in this area and do everything I can (within the rules) to try to beat my opponent, and then be able to clock out, take off the lawyer hat, and end the day with a good clean handshake, fist bump, or Milly Rock (my teenage daughter tells me this is cool).

SPRING INSTITUTE

MAY 12, 2022

8:00 a.m.

CLE @ WT Enterprise Center

11:30 a.m.

**Lunch/Swearing-in of new AABA
officers and directors
@ WT Enterprise Center**

1:00 p.m.

**Golf Tournament
@ Ross Rogers**

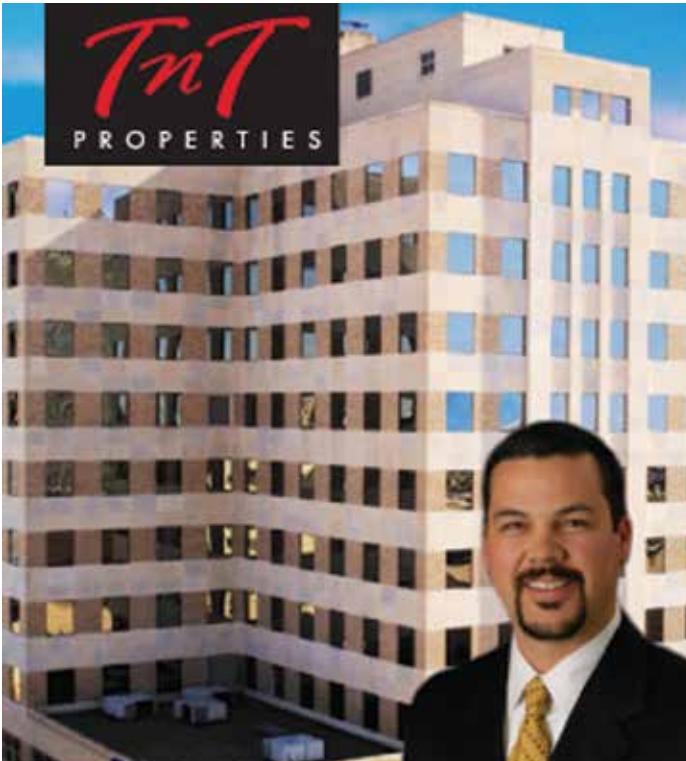


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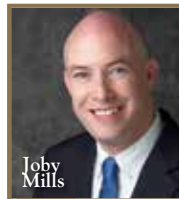
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7TH COURT OF APPEALS UPDATE

By Chief Justice Brian Quinn

March was named for the Roman god of war, Mars. That may explain why one of the most watched college battles begins to play out that month . . . the NCAA Tournament. Vying with opposing counsel also can be a battle, as can be sparring with the judge. Some signs I've seen that subtly indicate you're losing the latter battle include 1) being asked if "you want to stick with that argument"; 2) hearing "that's a very interesting argument"; 3) hearing the two words "move on"; 4) watching the judge put down his pen and sit back after asking you the same question twice; and 5) seeing the man-in-black nodding off. But, the best occurred some years ago in our court. No names mentioned, but if you hear a certain justice's voice grow "warmer" as he peppers you with questions and suddenly find yourself talking to the back of his chair, then it's time to collect the wounded and retreat. That sight tickles me to this day. Thanks, Mackey, for the great memory. Now, for other battles recently played out in your 7th COA.

The mother in *In re C.F.*, No. 07-21-00158-CV, 2021 Tex. App. LEXIS 10158 (Tex. App.—7th Dist. Dec. 28, 2021, no pet.) (mem. op.), wanted more time to undergo in-patient treatment for her alcoholism. She thought that successfully completing it would help her stop the State for ending her parental rights. As those who deal in such litigation know, the legislature gave the trial court a finite time within which to act. But the deadline can be extended for extraordinary reasons. Giving her the chance at rehab was one such reason proffered by Mother. The court denied the request, and Mother complained about it on appeal. We agreed with the trial court. Not only had she unsuccessfully attempted rehab before but, most importantly, her attorney said "ready to proceed" when asked for announcements. Saying "ready" weighs against you in your war for more time. Think about conditioning the statement, at the very least.

Next, we have *In re Estate of Bell*, No. 07-20-00220-CV, 2021 Tex. App. LEXIS 7610 (Tex. App.—7th Dist. Sept. 15, 2021, pet. denied) (mem. op.). It involved the removal of an estate's co-executors due to excessive spending. That spending included the payments of \$180,000 in attorney's fees to one attorney and \$375,000 in estate tax after securing the

services of H & R Block (as opposed to a certified public accountant). The trial court found the co-executors had engaged in mismanagement. Yet, statute required the mismanagement or misconduct to be "gross" to warrant removal. More than ordinary misconduct or mismanagement was needed. Furthermore, the trial court did not append the adjective "gross" to its finding of mismanagement. That resulted in our reversing the order removing the co-executors. There are several lessons here that do not necessarily relate only to probate litigation. One, if the law requires you to prove "X", then prove "X". Two, if you think you proved "X", ask the court to expressly find that "X" was proven. That may not always mean you win the appellate war, but it certainly helps your chances.

Then, there are situations where the battle's lost before it begins. That happened in *Oswalt v. Hale Cnty*, No. 07-21-00050-CV, 2022 Tex. App. LEXIS 133 (Tex. App.—7th Dist. Jan. 10, 2022, no pet. h.) (mem. op.), and concerned notifying a governmental entity of your negligence claim against it. Without proper notice the battle never begins. And, it is not enough to tell the entity about "a" claim. Tell it about "the" claim you pursue. In other words, if your client suffered personal injuries, say that. If he suffered property damage, say that. If he suffered both, say that. Mentioning only one does not cover the other, as the plaintiff discovered in *Oswalt*.

Yep, Mars is still around, and he enjoys his month. So, gird up as the games begin.





AAYLA UPDATE

By Brittany K. Hinton

Basketball fans rejoice! March Madness returns for the first time in nearly two years and is set to begin on Thursday, March 18, 2022.

Equally exciting is the return of AAYLA's Biennial Las Vegas CLE! AAYLA again extends an invitation to the local bar to attend its Biennial Las Vegas CLE on Friday, April 1, 2022. As a reminder, attorneys of all ages are invited, not just current AAYLA members. The Biennial Las Vegas CLE's speaker lineup includes talented judges, a chief justice, and attorneys from both near and far. The topics of presentations from these talented presenters include litigation, criminal law, probate, OSHA, and mergers and acquisitions.

After attending CLE on Friday, attendees will have plenty of free time to watch the Final Four March Madness games in the most exciting atmosphere in the country. Perhaps we can even watch a Texas team compete in the

Final Four. (Personally, I will be cheering for Baylor.)

Encouragingly for all attendees, in the month of February, Clark County, Nevada's COVID-19 cases experienced significant decreases following a spike in January likely attributable to the Omicron variant. Through February 21, 2022, Clark County averaged less than 100 cases per day according to data from the Southern Nevada Health District, which can be accessed through this link: <https://media.southernnevadahealthdistrict.org/download/COVID-19/updates/2022/February/20220225-COVID-19-Trends-Clark-County-PUBLIC.pdf>.

The Registration Form for the Biennial Las Vegas CLE is contained in this AMA-Law edition. As a final note, AAYLA wants to express its gratitude to our generous sponsors, speakers, and all attendees from the local bar. We hope to see you there!

YOUNG LAWYER OF THE MONTH: BAILEY A. SAPIEN



Bailey A. Sapien

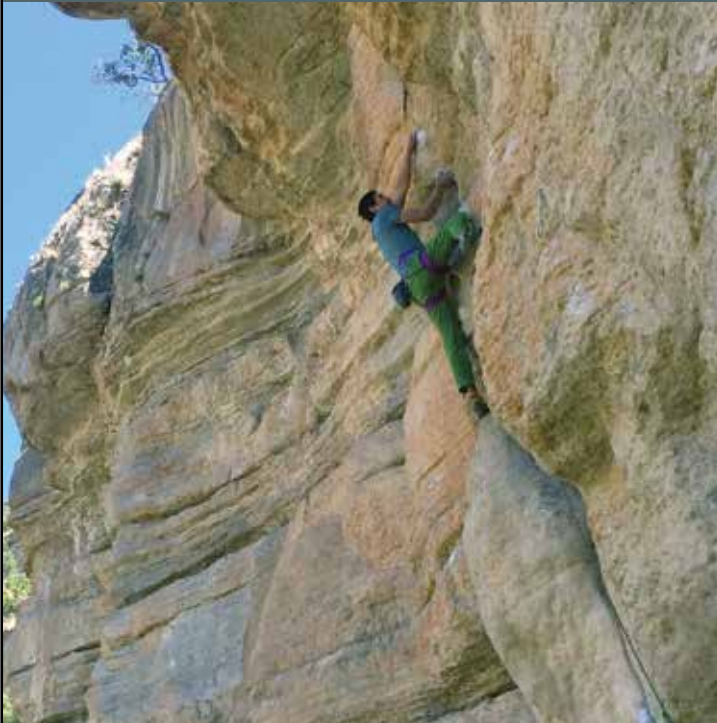
Bailey A. Sapien is an Assistant County Attorney for Potter County. Bailey is an Amarillo native. She graduated from Canyon High School where she was a member of the golf and volleyball teams. During high school, Bailey worked at Chick-fil-A where she occasionally put on the cow costume and became the chain's popular mascot. Bailey was also the Lions Club Queen and District Queen. Bailey obtained her Associates Degree from Amarillo College in legal studies and then went on to obtain her Bachelor of Arts and Science in legal studies from West Texas A&M. During college, Bailey worked for Brown and Fortunato here in Amarillo.

Bailey then went to San Antonio to attend law school at St. Mary's University School of Law where she obtained her law degree in 2020. During law school,

Bailey was a legal research and writing assistant for Professor Dye and mentored 1L students in their first year class. Bailey also participated in Moot Court and received an award from the Pro Bono College for her contributions delivering legal services to low-income Texans.

Bailey is married to Jordan Sapien also of Amarillo. Together they have one son, Apollo. Apollo is a year and half and was of great help during the studying and taking of the "Covid bar exam." Bailey is a member of the Amarillo Symphony Guild where she serves on the Board as the Instrument Express Chair and sits on the School Advisory Committee for St. Joseph's Catholic Parish and School. In her spare time, she likes to binge a good Netflix series or soak up time with her family.

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**CHIEF JUSTICE
BRIAN QUINN**

has served on the Seventh Court of Appeals since 1995. He is a graduate of the University of Texas, El Paso, and Texas Tech University School of Law.



**JUSTICE
JUDY C. PARKER**

has served on the Seventh Court of Appeals since 2017. Justice Parker served as Judge of the Lubbock County Court at Law Number 3 from 2008 to 2017 and as an associate judge for Lubbock County from 1994 to 2008. She is a graduate of Angelo State University and Texas Tech University School of Law.



**JUSTICE
LAWRENCE M. DOSS**

has served on the Seventh Court of Appeals since 2019. Prior to his appointment, Justice Doss was a partner at Mullin Hoard & Brown, LLP. He is a graduate of Baylor University and Texas Tech University School of Law. He is board-certified in civil appellate law by the Texas Board of Legal Specialization.

**RSVP BY MARCH 18, 2022 TO:
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PLEASE INCLUDE BAR NUMBER FOR MCLE CREDIT.

**COST:
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YOUR BAR EVENTS - MARCH 2022

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	AABA Bar Luncheon, Amarillo Club 10	Building Blocks of Wills, Estates & Probate, Eagle Center 11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		