



EL PASO BAR JOURNAL

An Update of Events and Information

April/May 2012

THE LAW WEST OF THE PECOS

The John F. Cook v. Tom Brown Ministries, *et. al* case

By Justice Guadalupe Rivera

Page 9

El Paso-a Crucible for Judicial Change?

By Clinton F. Cross and Jay L. Nye

Page 11

SENIOR LAWYER INTERVIEW

LARRY SCHWARTZ

By Clinton F. Cross Page 13



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THE PRESIDENT'S PAGE



Lawyers Serve All Judge Mo

Judge Morris A. Galatzan was a force of nature. He represented everything good about lawyers and the practice of law. Judge Mo, as many of his friends called him, was quick with a joke and a helping hand. The son of Russian Jewish immigrants, Judge Galatzan proudly served in World War II and was Judge of the 65th District Court in the 1950s. In his day, he was known as a top notch trial attorney. However, Judge Galatzan's importance to me and so many others was not the result of his past. He lived very much in present and firmly believed that helping people was a basic and ongoing responsibility. He was an outstanding example of how attorneys should treat people. He treated the runner (I had been a runner at my firm before law school) and the janitor just the same as a judge or corporate CEO--with dignity and respect. He loved people, and he loved being a lawyer. Judge Mo died in 1999, but his influence is still felt in countless ways in our bar.

I thought of Judge Galatzan during the Bar's Civil Trial Seminar, which was recently held in Las Vegas. He truly loved getting together with his fellow attorneys (and had many stories about those events). The seminar was a great event with many outstanding speakers. Judge Linda Chew and the CLE Committee did an outstanding job with the seminar. The camaraderie exhibited by the diverse group of attorneys in attendance was enjoyed by all.

Please join us for the Bar's Law Day banquet to be held at the DoubleTree on May 5. Justice Eva Guzman, the first Latina Justice on the Texas Supreme Court, will be our speaker and we have planned a fun evening. We are grateful that Justice Guzman will be joining us. Yvonne Acosta and her Law Day Committee are working hard on this event. We look forward to seeing you there!

BRUCE A. KOEHLER
President

EL PASO BAR ASSOCIATION
April Bar Luncheon

Tuesday, April 10, 2012

El Paso Club • 201 E. Main, 18th Floor, Chase Bank - \$20 per person, 12:00 Noon

Guest Speaker will be

Chief Justice (Ret) Richard Barajas, who will speak on

The Potential Impact of Border Violence on the Next Generation of Leaders

**Please make your reservations by Monday, April 9, 2012 at noon
 at nancy@elpasobar.com or ngallego.epba@sbcglobal.net**

We anticipate a very large turnout to this luncheon so please RSVP.

EL PASO BAR ASSOCIATION
May Bar Luncheon

Tuesday, May 8, 2012

El Paso Club • 201 E. Main, 18th Floor, Chase Bank - \$20 per person, 12:00 Noon

Guest Speakers will be

Rebecca Lightsey, Executive Director of Texas Appleseed,
 who will speak about school discipline issues;

and

Juana Padilla and/or **Diana Quezada**, who co-ordinate
 the El Paso County Attorney's Teen Court program

**Please make your reservations by Monday, May 7, 2012 at noon
 at nancy@elpasobar.com or ngallego.epba@sbcglobal.net**

Articles published in the Bar Journal do not necessarily reflect the opinions of the El Paso Bar Association, its Officers, or the Board of Directors. The El Paso Bar Association does not endorse candidates for political office. An article in the Bar Journal is not, and should never be construed to be, an endorsement of a person for political office.

CALENDAR OF EVENTS

PLEASE NOTE: Please check the Journal for all the details regarding all above listed events. If your club, organization, section or committee would like to put a notice or an announcement in the Bar Journal for your upcoming event or function for the month of June, 2012, please have the information to the Bar Association office by Friday, May 11, 2012. In order to publish your information we must have it in writing. WE WILL MAKE NO EXCEPTIONS. We also reserve the right to make any editorial changes as we deem necessary. Please note that there is no charge for this service: (915) 532-7052; (915) 532-7067-fax; nancy@elpasobar.com-email. If we do not receive your information by the specified date please note that we may try to remind you, but putting this journal together every month is a very big task and we may not have the time to remind you. So please don't miss out on the opportunity to have your event announced.

APRIL, 2012
Tuesday, April 3
 EPBA BOD Meeting
Friday, April 6
 EPBA Office Closed
 Good Friday
Sunday, April 8
 Easter Sunday
Tuesday, April 10
 EPBA Monthly Luncheon
Tuesday, April 10
 Deadline for Law Day
 Awards Nominations
Thursday, April 12
 EPYLA Meeting
Thursday, April 19
 EPPA Monthly Luncheon
Saturday, April 28,
 Law Day Chess Tournament

MAY, 2012
Tuesday, May 1
 EPBA BOD Meeting
Saturday, May 5
 2nd Annual DWI/Drug Court
 Classic
 Golf Tournament
Saturday, May 5
 Law Day Dinner & Awards
 Banquet
Tuesday, May 8
 EPBA Monthly Luncheon
Sunday, May 13
 Mother's Day
Thursday, May 17
 EPPA Monthly Luncheon
Monday, May 28
 EPBA Office Closed
 Memorial Day

Upcoming Events:

JUNE 2012
Tuesday, June 12
 EPBA Monthly Luncheon
 Swearing in of 2012-2013
 Officers & Directors
Sunday, June 17
 Father's Day
Tuesday, June 19
 EPBA Office Closed
 Juneteenth Day

EPBA/County Holidays

The El Paso Bar Association and the El Paso County Courthouse will be closed on the following dates:

Friday, April 6, 2012 – Good Friday
Monday, May 28, 2012 – Memorial Day



Former Assistant Attorney General **W. Barton Boling** on his 80th birthday with former staff and associates Gloria Fronterro, David Ferrell, Clinton Cross, and Ana Cortinas

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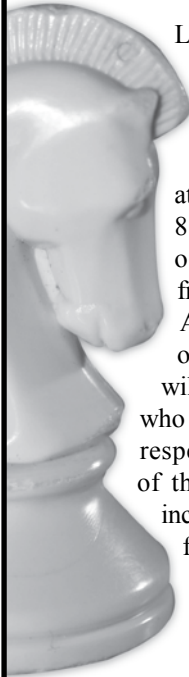
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Law Day Chess Tournament



Lawyers and paralegals are invited to participate in the Annual Law Day Chess Tournament that will take place Saturday, April 28, 2012 at the Church of St. Clement, 810 N. Campbell Street (corner of Campbell and Montana), from 9:00 a.m. to 12:00 noon. After competing against each other, the lawyers and paralegals will compete against the children who place first or second in their respective age divisions. Most of the children come from low income school districts because federal funds provide for chess

programs in low income school districts, but any child who is attending school in grades one through eight, or is home schooled and in the appropriate age group, may enter the tournament.

Participation is free. First and second place trophies are awarded to the children who prevail in each category (identified by grade level). The winners then play the lawyers and the paralegals. If they once again prevail, they receive additional recognition in the form of a medal that states "I Beat A Lawyer!"

Pre-registration of lawyers, paralegals, and children is appreciated, but not required. Pre-registration information should be e-mailed to: Augustine Valverde at: avalver6@nmsu.edu.

**THIS TOURNAMENT MEANS A LOT TO THE
CHILDREN WHO COMPETE FOR SUCCESS.
YOUR PARTICIPATION IS APPRECIATED.**

16th Annual Civil Trial Seminar

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We would like to thank all of our generous sponsors who made the 16th Annual Civil Trial Seminar in Las Vegas, Nevada such a huge success. We really could not do it without your support.

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SAVE THE DATE:
February, 2013 we will be
going back to Las Vegas!!!!



Over view of administrative law in your practice

BY JANET MONTEROS

You may not know it, but you may have already been engaged in the practice of Administrative Law. If you have ever represented an individual in a driver's license suspension or revocation proceeding, an engineer regarding a complaint lodged before her licensing board, a physician before the Texas Medical Board, a nurse before the Texas Board of Nurses, or a plumber before the Texas Board of Plumbing Examiners, you are practicing administrative law. If you have represented a business through an alcohol permitting process or written a letter on behalf of client expressing his or her opposition to a newly enacted agency rule, you have practiced administrative law. As an overview, the following is just a portion of what the practice of administrative law encompasses:

- Administrative hearings before administrative law judges
- Alcohol and Beverage Commission compliance
- Agriculture
- Architects
- Licensing and regulation of medical doctors, physician assistants, chiropractors, dentists, nurses, pharmacists, engineers, electricians, commercial drivers, plumbers, teachers, realtors, veterinarians, surveyors, cosmetologists, barbers, nurses aides as part of the list of occupational license holders
- School law and representation of school boards and districts
- use, oil & gas tax, business or nexus tax
- Department of Insurance
- Fitting and Dispensing of hearing instruments
- Texas Legal representation and appeals before state and federally funded agencies and governmental units.
- Workers' Compensation
- Public utility
- Energy
- Technical schools
- Environmental issues and compliance
- Banking and credit unions
- Oil & gas
- Petroleum and refinery issues
- Environmental issues and compliance
- State comptroller tax: sales and use, business taxes
- Accountants

- Nursing homes
- HMOs
- Restaurants
- Psychologists
- Lottery commission
- Insurance agents and insurance companies
- Appraisers
- Funeral establishments and funeral directors
- Physical therapists
- Social workers
- Midwives
- Athletic trainers

Government regulation is so pervasive in today's world that it is a rare practitioner that escapes delving into the practice of administrative law during his or her professional life. This short article will briefly touch on several important aspects in the practice of administrative law and is not meant as an exhaustive delineation of administrative law topics.

Background:

Administrative law is federal in origin. *See*, The Administrative Procedure Act (APA), Pub.L. 79-404, 60 Stat. 237, enacted June 11, 1946, Recodified by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383 Recodified by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 383. Additionally, a Model State Administrative Procedures Act (MSAPA) was drafted by the National Conference of Commissioners on Uniform State Laws during that same year. The Texas version of the Administrative Procedure Act incorporated much of the terms in the earlier versions of the Model State Administrative Procedures Act. The Texas APA (original APTRA) was based primarily on the 1961 Revised Model State Administrative Procedure Act (MSAPA). *See*, Dudley D. McCalla, *Comments on Interpretive Rules, Agency Interpretations and Reasoned Justifications*, (2011 Advanced Texas Administrative Law Seminar UTCLE – Austin August 25-26, 2011), page 1.

The distinguishing feature governing the practice of administrative law is the principle that an agency can contain all three powers generally separated between the executive, legislative and judicial branches. In Texas the

first rendition of the Administrative Procedures and Texas Register Act came about in 1975. Texas Gov't Code, §2001 and §2002 Agency rule making falls within the context of the legislative function under the APA. The rules promulgated by the various state agencies under the process outlined under the Act are regularly posted and updated on the Texas Secretary of State website. *See*, <http://www.sos.state.tx.us/tac/index.shtml>. The importance of familiarity with the relevant set of agency rules cannot be overstated as outlined in the following paragraphs.

Contested Case Proceedings:

Simply stated, if your client finds himself involved in disciplinary proceedings due to issues regarding his licensure, conduct or application, the process will probably entail his appearance before the State Office of Administrative Hearings if settlement cannot be made in an informal settlement conference. This is the area where agencies exercise their judicial function. These adjudicative hearings are hearings where evidence is heard and based on the evidence and acting in a judicial or quasi-judicial capacity, a determination is made as to the rights, duties or privileges of parties before it. *See, Ramirez V. Texas State Bd. of Medical Examiners*, 927 S.W.2d 770 (Tex.App – Austin 1996). This arena can be a quagmire of unfamiliar terms such as the standard of review allowed on appeal, substantial evidence along with some similarities to a standard civil practice such as motions for summary disposition and motions for rehearing. Additionally, the administrative law practitioner not only has to have a good grasp of the statutory law but also possess a familiarity with the agency's administrative rules. For example in a case involving a physician, the practitioner will not only be dealing with the applicable statute, Tex.Occ.Code Ann. §§152 through 165 but also the rules that the Texas Medical Board has enacted. These rules are available under 22 Texas Administrative Code §§161 through 200 (Texas Medical Board rules). The practitioner will also need to have a good grasp of the administrative rules promulgated by the State Office of Administrative Hearings under 1 Texas

Administrative Code §§155 through 167. Any resort to judicial review will, in most instances, be subject to exhaustion of remedies available through SOAH and the administrative agency before appeal to district court. Appeals to district court will usually take place in Travis county as Travis County is the situs of state agencies. In summary, a contested case proceeding will cover issues relating to agency authority, agency interpretation of statutes and rules, discovery, due process concerns, jurisdiction issues covering sovereign immunity, compliance with prerequisites to suit, exhaustion of remedies, standing and the right to judicial review.

Rulemaking:

As noted before, agencies exercise a legislative capacity through rulemaking which can be described as a core function of administrative agencies. See, Pamela M. Giblin and Carlos R. Romo, *Rulemaking Update & Outlook*, at the 23rd Annual Advanced Administrative Law Course, Austin, Texas (June 30-July 1, 2011) at page 1; see also, Texas Gov't Code, Chapters 2001, 2006 and 2007. Notice and comment are requirements in the area of rulemaking so that interested persons be given a "reasonable opportunity" to present their positions on the proposed rule. See, *Id.* The agency response to the comments from interested persons will allow the agencies to state their "reasoned justification" for the adopted rule. Texas Gov't Code § 2001.033 (requiring a summary of comments and reasons why the agency disagreed with submissions and proposals). There is also a requirement for a takings impact assessment for certain actions under 2007.003 which outlines the Act's applicability and rules exempt from takings analyses. See, Texas Gov't Code §§2007.043. It is also important to note how an agency arrives at the final adopted rule as the process of adoption is critical to any judicial challenge of an agency's rule, with challenges using the declaratory judgment action as a vehicle to bring it before the district courts. As a reference point, the Texas Supreme Court in its opinion in *El Paso Hospital District v. Texas Health and Human Services Commission*, 247 S.W.3d 709, 714 (Tex.2008), addressed rulemaking and what makes a rule including whether it has general applicability as the requirement of general applicability invokes the formal rule-making process. *Id.* at 715.

Declaratory Judgment Actions and governmental waiver of Sovereign Immunity in Administrative Law

The applicability of sovereign immunity can involve tort claims, contract claims as well

as claims for injunctive and equitable relief. However, in the practice of administrative law, the issue of sovereign immunity regularly presents itself in the context of challenges to the authority of state officials. *City of El Paso v. Heinrich*, 284 S.W.3d 366 (Tex.2009). Rule challenge typically utilizes declaratory judgment action.

Under the Uniform Declaratory Judgments Act, persons "affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations there under." Tex. Civ. Prac. & Rem. Code Ann. § 37.004. As outlined in the preceding paragraphs, the challenge to authority is also couched in terms of challenges to adopted rules. *El Paso Hospital District v. Texas Health and Human Services Commission*, 247 S.W.3d 709, 714 (Tex.2008).

In the context of this type of challenge, the suit "must not complain of a governmental officer's exercise of discretion but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial function." A suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act. *City of El Paso v. Heinrich*, 284 S.W.3d 366, at 372 (Tex. 2009). Courts often use the terms "sovereign immunity" and "governmental immunity" interchangeably. However, they involve two distinct concepts. "Sovereign immunity" refers to the State's and its agencies' immunity from suit and liability. *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 694 n.3, 46 Tex. Sup. Ct. J. 494 (Tex. 2003). Governmental immunity protects political subdivisions of the State, including counties, cities, and school districts. *Bell v. City of Grand Prairie*, 221 S.W.3d 317, 321 (Tex. App. Dallas 2007).

A few administrative law practitioners have realized that adding a claim for declaratory or injunctive relief when challenging a contract action, will not allow their client to bypass the sovereign immunity bar to suit and liability. *Bell v. City of Grand Prairie*, 221 S.W.3d 317. Typically, when the only injury alleged is in the past and the only real remedy is an award of money damages, a declaratory judgment claim is barred by sovereign immunity. *Id.* However, in a rule challenge where the primary basis

for the challenge is based upon the validity or invalidity of the rule, the use of a declaratory judgment action is an appropriate legal vehicle. *Combs v. Entertainment Publications, Inc.*, 292 S.W.3d 712, (Tex. App. Austin 2009) As noted in *Combs*, "the Texas Administrative Procedures Act (APA), Tex. Gov't Code Ann. §§ 2001.021-.041 (2008), allows a person to challenge the validity or applicability of an agency rule pursuant to a declaratory judgment action if it is alleged that the rule or its threatened application interferes with or impairs a legal right or privilege of the plaintiff. Tex. Gov't Code Ann. § 2001.038(a). The APA declaratory-judgment vehicle of Tex. Gov't Code Ann. § 2001.038 is a legislative grant of subject-matter jurisdiction." *Id.* at 720.

Texas Public Information Act (TPIA) Tex. Gov't. Code §§552.101-552.148

Another familiar aspect of Administrative Law is the TPIA. The TPIA governs the governmental release of information deemed to be public. It also provides for over one hundred exceptions to the release of information. See, *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 355-56 (Tex.2000). On rare occasions, a private entity contracting with a governmental unit, performing governmental functions could be subject to the TPIA with regard to disclosure of information. Tex. Gov't. Code §552.002(a)(2)(a) In this chapter, "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." If a governmental entity decides to withhold any information requested by the public, they must notify the requestor and forward a letter to the Texas Attorney General, briefing the issues along with a copy or sample copy of the information requested by the requestor. A governmental body must ask for a decision from the Attorney General's office and state the exceptions that apply within ten business days of receiving the written request for information. See . Tex. Gov't. Code § 552.301(b).; Tex. Att'y Gen. ORD-00621 (2012).

However, it is noted that judicial records are not subject to the TPIA, but come within the Rules of Judicial Administration, specifically Rule 12. Any denials of information can be appealed to the Texas Office of Court Administration.

Texas Open Meetings Act (OMA) TEX.

GOV'T CODE ANN. § 551.001-551.146.

In the words of Texas Supreme Court Justice, Lloyd Doggett in Acker, in *Acker v. Texas Water Com'n*, 790 S.W.2d 299 (Tex. 1990):

The Open Meetings Act was enacted in 1967 for the purpose "of assuring that the public has the opportunity to be informed concerning the transactions of public business." Acts 1967, ch. 271, § 7, 1967 Tex.Gen.Laws 597, 598. It recognized the wisdom contained in the words of Justice Brandeis that: "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." L. Brandeis, *Other People's Money* 92 (1914 ed.). The executive and legislative decisions of our governmental officials as well as the underlying reasoning must be discussed openly before the public rather than secretly behind closed doors. In order to effect this policy, this statute requires that "every regular, special, or called meeting or session of every governmental body shall be open to the public." Tex.Rev.Civ.Stat. Ann. art. 6252-17, § 2(a) (Vernon Supp.1990). A "meeting" includes any deliberation involving a "quorum" or majority of the members of a governing body at which they act on or discuss any public business or policy over

which they have control. *Id.* at §§ 1(a) and (d). Any verbal exchange between a majority of the members concerning any issue within their jurisdiction constitutes a "deliberation." *Id.* at § 1(b). When a majority of a public decisionmaking body is considering a pending issue, there can be no "informal" discussion. There is either formal consideration of a matter in compliance with the Open Meetings Act or an illegal meeting. We have previously noted that there is a broad scope to the coverage of the Open Meetings Act and a narrowness to its few exceptions. *Cox Enterprises, Inc. v. Board of Trustees*, 706 S.W.2d 956, 958 (Tex.1986). Its breadth is consistent with the recommendation of Woodrow Wilson that "Government ought to be all outside and no inside."² Our citizens are entitled to more than a result. They are entitled not only to know what government decides but to observe how and why every decision is reached. The explicit command of the statute is for openness at every stage of the deliberations. Accordingly, we have demanded exact and literal compliance with the terms of this statute. *Smith County v. Thornton*, 726 S.W.2d 2, 3 (Tex.1986).

The public's access to government information is the fundamental basis for both the Public Information Act as well the Texas Open Meetings Act however, the definitions of

governmental body differ between the two Acts. The practitioner in his or her practice needs to be aware that although similar definitions of governmental body apply, there are some differences between the two. The Public Information Act defines a governmental entities as those supported by public funds (§552.003(1) (A)). However, perhaps to the astonishment of some, the Open Meetings Act does not require that a governmental entity be in receipt or supported by public funds for applicability of OMA. *See*, Tex. Att'y Gen.LO-98-040, at 2. It may be applicable to a client that you did not initially perceive as a governmental entity.

In summary, the practice of administrative law is more commonplace than most practitioners believe. Only a few of administrative law concepts have been covered above. A thorough familiarity with the particular agency's statutes and rules pertaining to your client's dilemma is crucial in your effective representation of a client in administrative law matters. The best way to start your analysis is by accessing the pertinent statute(s), applicable administrative rules for the agency, any relevant Attorney General opinions on the issue and also accessing, the State Office of Administrative Hearings procedural rules under the Texas Administrative Code and relevant case law.

JANET MONTEROS is an Assistant El Paso County Attorney. She is board certified in administrative law by the Texas Board of Legal Specialization. She is also President-elect of the El Paso Women's Bar Association.

THE LAW WEST OF THE PECOS

BY JUSTICE GUADALUPE RIVERA

The Eighth Court of Appeals released its opinion on February 17, 2012 in *John F. Cook v. Tom Brown Ministries (TBM), Word of Life Church of El Paso (WOL), Tom Brown, (Brown) El Pasoans for Traditional Family Values (EPTFV), Salvador Gomez, Ben Mendoza, Elizabeth Branham and Richarda Momsen, in her Official Capacity as El Paso City Clerk (Clerk)*, No. 08-11-00367-CV, 2012 WL 525451(Tex. App.- El Paso, 2012). Mayor John F. Cook sought to enjoin the use of recall petitions for a recall election alleging the petitions had been knowingly and improperly

financed, gathered, circulated, and submitted in violation of the Texas Election Code. The trial court denied injunctive relief and an accelerated interlocutory appeal followed.

Brown, President and Chairman of the Board of Directors and Pastor of a non-profit corporation, WOL, served as the chairman of EPTFV, a specific-purpose political committee created to secure passage of an ordinance which provided in part, "...El Paso endorses traditional family values by making health benefits available to city employees and their legal spouse and dependent children." The ordinance was approved at the November

2, 2010 election. With that, the committee's purpose ended. On June 14, 2011, El Paso City Council amended the ordinance and restored health benefits to those who would have lost their benefits under the ordinance. In response, Brown, WOL Church, and EPTFV joined in an effort to recall Mayor Cook. On July 18, 2011, in a social media statement, Brown encouraged the public to call the church to sign the petition.

On September 12, 2011 Cook filed suit seeking a temporary restraining order, injunctive relief and a declaratory judgment, stating that efforts to initiate a recall election are not

exempt from Texas campaign finance laws and that TBM, EPTFV, and the other appellees violated provisions of the Election Code in the circulation and submission of recall petitions. The trial court issued a TRO enjoining any further circulation of petitions and scheduled an injunction hearing. The following day a motion to dissolve the TRO was filed and a day later the court dissolved the portions of the TRO that enjoined the circulation of recall petitions and ordered the City Clerk to accept all original recall petitions. The trial court noted that Cook might be “absolutely right” that fraud and illegality may have taken place and asked whether the trial court had the power to stop an election to thwart the rule of the public. In response, Cook argued that under Section 253.094 (b) the court could enjoin illegal acts and that he was not seeking to enjoin an election or contest election results.

The court explained that although it wanted to give meaning to Section 253.094(b), the will of the people was more important. Not wanting to thwart the will of the people, the court noted it would force Cook to have a subsequent court determine whether the recall election had been void from its inception should illegality, fraud, or irregularity be found.

Cook filed for emergency temporary relief with the Eighth Court of Appeals and on October 3, 2011 the court dismissed the mandamus petition as moot because the temporary restraining order had expired by its own terms.

Evidence presented at the temporary-injunction hearing established that EPTFV was formed in 2010 as a specific-purpose political committee. In July 2011, EPTFV filed a change of treasurer to Ronal Webster and a change of address but did not change the committee’s original purpose of supporting a traditional-family-values measure, to one supporting, opposing, or assisting a candidate, officeholder, or other measure, nor did it make provisions for a new election date. EPTFV did not file reports regarding contributions, expenditures, or loans. EPTFV was involved in the recall effort and had spent more than \$3,000 in support. No other appointment of treasurer or creation of a specific-purpose committee was ever made. The trial court denied Cook’s request for injunctive relief and the recall election was subsequently scheduled for April 14, 2012.

In seeking injunctive relief, Cook relied on Section 273.081 of the Election Code and he was not required to establish the common law injunctive relief elements of imminent harm or irreparable injury and lack of adequate remedy at law. Under Section 273.081 a showing of harm or danger of being harmed by a violation of the



Election Code entitled him to injunctive relief to prevent the violation from continuing or occurring. The court noted that although the decision to grant or deny a temporary injunction rests within the trial court’s discretion, the trial court has no discretion in determining what the law is or in applying the law to the facts. Where the facts definitively indicate that a party is in violation of the law, a trial court no longer possesses discretion but must enjoin the violation.

Texas Election Code Section 253.096 restricts a corporation from making a campaign contribution from its own property in connection with a measure-only election unless the contribution is made to a measure-only committee. Section 253.094(b) prohibits a corporation from making political contributions in connection with a recall election, including the circulation and submission of petitions to call an election and Section 251.001(2) defines “contribution” to include a direct or indirect transfer of money, goods, services, or any other thing of value.

WOL Church, a corporation, used its website to ask for volunteers to circulate recall petitions. The website provided an electronic entry form whereby anyone who desired to circulate a recall petition could register. The website also listed the addresses where recall petitions were located, which included WOL Church, other corporations, a business and an individual. WOL made its facility and personnel available to assist in the signing and circulation of the recall petitions. The court concluded that WOL made campaign contributions in connection with a measure-only election in the absence of a measure-only committee and it made political contributions in connection with a recall election including the circulation of petitions in the absence of a political committee.

Appellees relied on *Citizens United v. Fed. Election Comm’n*, ___ U.S. ___, 130 S.Ct. 876, 175 L.Ed.2d 73 (2010), to argue that the circulation and submission of recall petitions by corporations

represent core First Amendment activity and fall within the protection of *Citizens United*. However, in a post-*Citizens United* case, the Texas Court of Criminal Appeals determined that the creation of a corporate political committee for soliciting contributions and making expenditures affords sufficient avenue for corporate free expression. *In re Ellis*, 309 S.W.3d 71, 91. Relying on *Ellis*, the court stated, “... the Election Code has not and does not prohibit any and all corporate contributions in connection with recall elections. It merely prescribes the parameters under which contributions may be made.”

The court reasoned, “But for the trial court’s acquiescence to the ‘will of the people’, the improper dissolution of relevant portions of the temporary restraining order and the denial of injunctive relief, the certification would not have occurred and the election would not have been called. Because the matter was one that could have and should have been judicially resolved in time for the proponents to correct deficiencies without delaying the election, injunctive relief was the proper remedy to prevent violations from continuing or occurring and [this] was not an election contest.”

The court’s denial of injunctive relief was so arbitrary that it exceeded the bounds of reasonable discretion. The court determined that the error related back to the time of the improper dissolution of the TRO, prior to the presentment and certification of the petitions, thus all recall petitions submitted to City Council were illegal and invalid. The court concluded the use of the illegally procured petitions caused Cook harm and he was entitled to injunctive relief. The court reversed and rendered and ordered the City Clerk to decertify and return the recall petitions.

Justice Guadalupe Rivera is an Associate Justice of the 8th Court of Appeals.

El Paso—a Crucible for Judicial Change?

BY CLINTON F. CROSS AND JAY L. NYE

For many months we have been shocked by the arrest of one public official after another, and by the conviction of others. In the midst of the daily headlines, we should remind ourselves that there are public officials and employees doing their best to serve the public. Indeed, in the legal field El Paso has led the nation in the development and advancement of a number of important initiatives.

An example of this important but largely unheralded work lies in the development and use of Drug Courts in the criminal justice system. The first criminal Drug Court program in El Paso was launched in 2001, and was administered by Judge David Guadarrama. Judge Patrick Garcia established the Substance Abuse Punishment Facility program (SAFPF) for the 384th District Court in 2003. Judge Robert Anchondo followed suit, creating the first D.W.I. Drug Court program in the State of Texas.

Since then other Drug Courts have been established. Judge Sam Medrano oversees a dual track juvenile Drug Court, with separate court hearings for boys and girls. Federal Judge Montalvo supervises a re-entry Drug Court program. Judge Lawrence Lujan with the Tiguas also has a Drug Court program. In addition to the SAFP program, Judge Garcia also supervises the adult criminal Drug Court program. Judge Angie Barrill is in the process of creating a veterans treatment court.

Judge Guaderrama described the Drug Court concept in an article in the El Paso Bar Journal in September, 2009 as follows:

“Drug Court is a concept based upon the idea espoused by the medical community that therapeutic treatment is more effective than incarceration and the other tools of traditional courts. Drug Courts should not be confused for their counterparts in the battle against drug abuse, the Drug Impact Court. A Drug Impact court targets major drug dealers. A Drug Court targets addicts and abusers.”

“Drug Courts” dramatically change the nature of the judge’s role in judicial hearings.



In traditional criminal courts, judges are strict parental authority figures who preside over adversarial hearings that sometimes “punish” offenders by sending them to jail or prison. The judge’s role in a Drug Court proceeding is more like that of a therapist—a caring, non-judgmental parental figure; provided, of course, the offender complies with the treatment program.

Treatment of drug offenders, as in many other endeavors, is the result of a coordinated team effort. The rehabilitation program is intensely administered by a team composed of the court, staffed with assistants trained in the treatment of substance abuse, the district attorney’s office, the public defender’s office, the probation department, and the sheriff’s office and the police department.

Drug courts save taxpayers’ money because offenders remain in the local community with their families and must maintain employment in order to participate in the program. It has been demonstrated that taxpayers spend less money on drug court programs than on incarceration, especially when recidivism is factored into the equation.

The Drug Court movement has transformed

the criminal justice system in dramatic ways. It may represent the most significant change in the traditional criminal court model in history, focusing on rehabilitation and the cause of the offending behavior—rather the offending behavior itself, and on punishment that may temporarily protect the public or perhaps more important satisfy the victim’s need for revenge.

El Paso Judges and attorneys are beginning to be recognized as leaders in the movement to reform the system. In 2009, Deputy County Public Defender Jay Nye was elected to the Board of Directors of the Texas Association of Drug Court Professionals (TADCP). In that year, Judge Robert Anchondo was elected Vice President of TADCP. In 2010 TADCP held its state conference in El Paso. In 2010 Judge Anchondo was elected President of the organization, and took office in 2011.

TADCP provides training and assistance to judges, attorneys, counselors, probation officers, and law enforcement officers working with Drug Courts. As a result, TADCP is also an advocate for reforming the criminal justice system, at least in responding to drug related offenses.

El Paso judges and lawyers are providing leadership in this arena that is now reaching beyond the borders of our nation. Responding to an invitation from members of the Bar in Ecuador, for instance, Judge Anchondo recently traveled to that country to address judges and other members of the Ecuadoran legal community regarding the advantages of therapeutic jurisprudence.

The judicial response to drug related crimes is part of a larger debate about whether or not to legalize minor amounts of drug possession and, if so, how to do so. While it may be too soon to predict how these inter-related debates will be ultimately resolved, it is clear that El Paso judges and lawyers are contributing to the discussion in many significant ways.

CLINTON CROSS is an Assistant County Attorney responsible for prosecuting criminal Deceptive Business Practice cases.

JAY L. NYE is a Deputy El Paso County Public Defender.

SOLACE: Lawyers helping lawyers in the face of tragedy

BY KRISTIN M. CONNOR

On April 19, 2012, the Honorable Jay C. Zainey of the Eastern District of Louisiana will be at the El Paso Club to discuss a program he helped begin in Louisiana to support attorneys and legal professionals facing difficult personal tragedies: SOLACE. SOLACE stands for Support of Lawyers/Legal Personnel-All Concern Encouraged. Since 2002, SOLACE has facilitated the Louisiana legal community reaching out in a small, but meaningful and compassionate way, to judges, lawyers, court personnel, paralegals, legal secretaries and their families who experience a death or some catastrophic illness, sickness or injury. The program creates a notification system of such tragedy, and then SOLACE responds with the appropriate support.

In Louisiana, the SOLACE network has grown to more than 5,000 legal professionals who are quickly accessible by email, and the network has assisted more than 500 individuals and families. The assistance provided ranges from a condolence card to a grieving family to immediate air transportation for an attorney

needing to travel out-of-state for a life-saving organ transplant. The SOLACE network was activated in the aftermath of Hurricanes Katrina and Rita to recruit volunteers and services for relief efforts as well as to help a displaced New Orleans legal services attorney set up elsewhere to continue serving his clients.

SOLACE programs exist in other states, and several chapters of the Federal Bar Association (FBA) are considering starting a SOLACE program after the FBA's president, Ashley L. Belleau, encouraged all FBA Chapters to join this very important project, thus expanding the possible impact of the SOLACE network. Please join the El Paso Chapter of the FBA at the El Paso Club on April 19, 2012, to learn more about SOLACE from Judge Zainey.

KRISTIN CONNER is an Equal Justice Works Fellow at the Diocesan Migrant & Refugee Service, and an El Paso attorney specializing in immigration law. She is also President-elect of the El Paso Federal Bar Association.

Federal Bar Association – El Paso Chapter invites you to the following presentation:

SOLACE Program

Presenter:

**The Honorable Jay C. Zainey,
United States District Judge
Thursday, April 19, 2012**

12:00 p.m. – 1:00 p.m.

El Paso Club, 201 E. Main Street, 18th floor

1.0 hr Ethics CLE pending

Cost: \$20 for FBA members;
\$25 for non-FBA members
Due at the program; checks
payable to
"FBA El Paso Chapter"

**RSVP by April 13 to Kristin Connor at
kristinconnor@gmail.com or 915-532-3975 ext. 240**

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SENIOR LAWYER INTERVIEW

LARRY SCHWARTZ

■ BY CLINTON F. CROSS

CROSS: Tell me about your childhood.

SCHWARTZ: I was born in Chattanooga, Tennessee. My parents were Polish immigrants. My mother came into the U.S. through Mexico and entered the U.S. through New York. My father came directly from Poland to the U.S. My parents met in New York City, and married there and lived in Brooklyn. They moved to Tennessee to start a grocery store business. I had two brothers; the one who is still alive, a CPA and a lawyer is practicing in Los Angeles.

CROSS: Wife?

SCHWARTZ: My wife Dani is a speech pathologist with the El Paso ISD. She has been the light of my life.

CROSS: Children?

SCHWARTZ: I have four children, three boys and one girl. My youngest son Mark lives in Ft. Worth, has a law degree, and is working for Baker, Botts computerizing discovery in litigation cases. My middle son David is a lawyer/CPA is retired, living in Kauai, but continues to do consulting work in securities compliance. My oldest son Mike is a CPA and is comptroller of Riviana Foods in Houston. Mike's wife Romi Schwartz is a lawyer, working for legal aide. My daughter Jeanne teaches history and government at Irvine High School. I have seven grandchildren, six boys and a girl.

CROSS: Where did you go to school?

SCHWARTZ: I went to public schools in Chattanooga, Tenn. I went to college at the University of Tennessee at Chattanooga, majoring in accounting and received a Bachelor of Science degree in Business Administration. I went to law school at the University of Cincinnati and while there the University of Cincinnati won two NCAA basketball championships and when I got to El Paso Texas Western College won the NCAA basketball championship.

CROSS: After you graduated, what did you do?

SCHWARTZ: After I graduated, I received a commission in the U.S. Army as a first lieutenant. I was then assigned to the office of the Staff



Judge Advocate at Ft. Bliss. I served in the army for three years, attained the rank of Captain, and then went into the reserves.

CROSS: What did you do next?

SCHWARTZ: When I left the service, I joined the firm of Diamond, Thorne, and Leslie. I handled criminal, family, commercial and real estate cases. After seven years, Bob Earp and I left the firm and started our own firm. Shortly after starting the firm, I was among the original ninety-nine lawyers certified in Family Law by the Texas Board of Legal Specialization. Some of the other lawyers in the Diamond firm when I was there included Alan Rash, Bart Boling, Larry Baskin, Richard Buck, Nelson Smith, Bob Earp and Johnny Searles. In the Schwartz and Earp firm, lawyers included David McClure, Gene Semko, Michael Cohen, Gordon Stewart and Jeff Minor.

CROSS: Tell me a little bit about your legal career?

SCHWARTZ: I have been blessed in my legal career by being surrounded by outstanding lawyers, on both sides of the docket. I have tried cases with or against Royal Ferguson, Dick Shinout, John Grambling, Bill and Jack

Duncan, Ray Pearson, Tom Diamond, Joe Calamia, Albert Armendariz, Sr., Don Studdard and others. I have benefited greatly by my involvement in the Family Law Section of the State Bar of Texas, where I have met other great lawyers. The involvement in the State Bar activities and CLE has been instrumental in furthering my legal education and sharing ideas and concepts with those other lawyers. As a result of my involvement with the State Bar and the networking with other lawyers across the State I was able to build a quality family law practice. I have handled many complicated family law cases, including custody cases, and complex property disputes. I have also throughout my career handled numerous pro bono, sometimes referred to me by the legal aid office.

CROSS: Public service, if any.

SCHWARTZ: I served on the board of directors of the El Paso Legal Assistance Society for a number of years, and I am proud of that service. When I was elected to the board there was considerable opposition to the federally funded legal services program. I was proud of the service that the society rendered, providing legal services to people who otherwise could never get justice. I also served on the board of El Paso Family Services and numerous State Bar boards and committees.

CROSS: Any advice for young lawyers?

SCHWARTZ: If I were a young lawyer starting out, knowing what I know now, and I wanted to do family law, I would urge the lawyer to get involved in the State Bar's Family Law Section, and continue to study the law and recent developments in the law. The State Bar's CLE programs are among the best in the United States. The courses may be expensive, but the benefits far out-way the costs. In this adversarial and competitive business, the lawyer who keeps abreast of a constantly changing body of laws will end up prevailing over the lawyer who does not do so.

CLINTON CROSS is an Assistant County Attorney responsible for prosecuting criminal Deceptive Business Practice cases.

ADVANCE SHEET, *circa 1522 ~1525*

BY CHARLES GAUNCE

Urmeston's Case:

King's Bench, before 1525, c. 1522 or later: cases cited in Gray's Inn after 1 Oct. 1522

If someone grants the next advowson to another, and he grants it [over] to someone else if it should happen to fall vacant during the lifetime of the first grantee, it seems this is a good grant. And John Hales, Baron, said that Fyneux [C.J.] held that where someone said to a person who was to marry his daughter, 'All these jewels I will give to you, but I myself shall have them during my lifetime', this was a good gift even though the donor was to have them during his lifetime. It is like the case of Robert Urmeston, where someone said these words to him, 'I will give you this gown of mine if I die before you', and he died while Urmeston was alive, and several in the Exchequer held this a good gift.

No wonder the study of law can be so confusing. I mean aside from getting lost in the pronouns. In the quoted passage, how many of you had to think about the statement, "someone said to a person who was to marry his daughter?" Does the pronoun "his" refer to the "someone," or to "a person?" While I am fairly

confident that a person planning an incestuous marriage might be counseled by others, if that was the relationship the case is discussing, then the ruling would be about something entirely different than discussing the possibility of life estates in powers of appointment.

So, what is an advowson? Black's is helpful on this point and states: "*Eccles. law.* The right of presenting or nominating a person to a vacant benefice in the church." It is interesting to note that the determination of a point of ecclesiastical law was being decided by the King's Bench, rather than the ecclesiastical court, a few years before Henry VIII decided that his word should be the final word in things of a religious matter. History tells us that Henry did not start to become disenchanted with Catharine of Aragon until 1525, and that the break with Rome didn't really get heated until 1532. So why was this case before the King's Bench? Or was the ability to appoint a church official viewed as a property right to be determined in civil court?

Next point: What is a gift? The case discusses the ability to transfer the right to appoint a church official held by one person to a second person, and thence to yet a third person upon the death of the second person. Essentially creating a lifetime power of appointment in the second person and shifting the power to another at death. Clearly the person receiving the life tenure of the power has no ability to further convey the power beyond

his death, thereby effectively removing it from his estate. But the court clearly discusses this grant in terms of a gift. A gift, if I remember my property class correctly, requires donative intent, delivery, and acceptance. The donative intent requires an irrevocable surrender of control over the item given. Somewhat less than that is conveyed here, unless the court assumes that the third person receiving the appointment is someone other than the grantor, or his heirs. If the power of appointment reverts to the grantor or his heirs upon the death of the first grantee, then there has been no "irrevocable surrender of control," and there is no gift.

Clearly, my musings on a very old case are not going to determine the outcome of the Republic, but there is a take-away from this case that is still important to us today.

"*Rex non potest peccare,*" translates as "The King can do no wrong." This statement usually applies to the concept of sovereign immunity and means the sovereign is immune from civil suit and criminal prosecution. But what appears to me from the court's actions in the noted case, is an unspoken extension of the concept of sovereign immunity to the King's friends: The King (and his friends) can do pretty much anything they want.

CHARLES GAUNCE is the Legal Reference Librarian at the University of Texas at El Paso

HELP!



The editors of the El Paso Bar Journal solicit your contributions dealing with substantive legal subjects or issues. We believe the interests of El Paso lawyers and law firms will be advanced by the publication of at least one or two articles in every Journal issue dealing with legal subjects and issues, such as the article by Janet Monteros published in the Journal's April/May, 2012 issue.

Good articles, of course, take time, thorough research and clear writing. In some instances, however, the research may be a product of your daily legal work-- researching an issue or writing a brief. We invite you to share your work with the

legal community in El Paso and wherever the inter-net may travel. If issues of confidentiality are involved, the work usually can be sanitized to comport with ethical requirements, while at the same time sharing your hopefully brilliant work with the larger broader community.

Articles should be submitted by e-mail to **Nancy Gallego, Executive Director of the El Paso Bar Association**, at nancy@elpasobar.com. They must be submitted at least one month prior to the proposed publication date, and they should not exceed 2,500 words unless the article is to be published in more than one issue.

DILIGENCE: A Mark of Excellence

BY JUDGE OSCAR G. GABALDÓN, JR., CWLS

“The liberties of our country, the freedom of our civil constitution are worth defending at all hazards; and it is our duty to defend them against all attacks. We have received them as a fair inheritance from our worthy ancestors: they purchased them for us with toil and danger and expense of treasure and blood, and transmitted them to us with care and diligence. It will bring an everlasting mark of infamy on the present generation, enlightened as it is, if we should suffer them to be wrested from us by violence without a struggle, or be cheated out of them by the artifices of false and designing men.” When these words of Samuel Adams (1722-1803) were published in 1771, they vividly portrayed the essence of diligence. His words captured the spirit of what diligence entails: passion, commitment, dignity, and staunch determination to bring and maintain a vision to fruition.

Hence, pursuing our tasks, dreams, or goals earnestly and with unwavering focus is critical to the virtue of diligence. Diligence includes the ability to be careful, while at the same time, to seek excellence in whatever it is we desire to accomplish or achieve. When we are diligent, we are consistently determined to resourcefully pursue and make our objectives become reality. Diligence is the sister of perseverance and tenaciousness, for they are all rooted in and given birth by steady and energetic effort. It is diligence that often helps to turn what seems impossible to become possible.

This treasured quality propels men and women to be timely to their engagements. It gives them the impetus to “hang in” no matter how trying and challenging doing that may be. Diligence manifests itself when we proactively tackle and complete everyday routine tasks, such as timely returning telephone calls, timely submitting assignments, timely making decisions, timely tending to important matters, and timely responding to the needs of others. Diligence helps us to persevere until the end in adhering to and completing responsibilities; and, doing so with a solid commitment to achieve outcomes that are

nothing less than excellent.

In professions, like that of the lawyer, diligence is golden. Being a diligent lawyer means that the lawyer must constantly keep abreast of developments in the law, must return the calls of clients on a reasonable and timely basis, must consistently keep his or her clients fully informed about their cases, and must make every effort to make sure that his or her calendaring is handled in such a way so that they are prepared, ready, and on time to scheduled court hearings, appointments, and other commitments. Abraham Lincoln recognized this all too well. He said: “The leading rule for the lawyer, as for the man of every other calling, is diligence. Leave nothing for tomorrow which can be done today.”

When a person is not diligent, often times this is indicative of a lack of consideration for others. A lack of diligence is sometimes associated with individuals that have disregard for other people’s time, other people’s interests, or other people’s needs. These people are usually late to engagements, often cannot be trusted to come through for others, will not be willing to place the interests of others over their own, and are generally considered to be unreliable and untrustworthy.

Diligence, therefore, is a key characteristic of the person that is dependable and responsible. It is an honorable quality that often places people in a positive light and in high regard. Diligence is a necessary ingredient for a person that truly values the road to success and achievement. In more eloquent words, perhaps Spain’s celebrated writer, Miguel De Cervantes (1547-1616), says it best: “Diligence is the mother of good fortune, and idleness, its opposite, never brought a man to the goal of any of his best wishes.”

OSCAR GABALDÓN is an Associate Judge of the 65th District Court responsible for overseeing the trial of Child Abuse and Neglect cases. He is certified by the National Association of Counsel for Children as a Child Welfare Law Specialist (CWLS).

Judicial Spotlight



Antonio Rodriguez

Name: Antonio Rodriguez
Court: Associate Judge Title IV-D Court, Child Support
Years on the Bench: Four (4) years, appointed by Presiding Judge Steve Ables on March 10, 2008

Years in practice: Licensed in State of Texas November 1978; Western District and Court of Appeals.

Education: UTEP B.A. 1975
Catholic University of America, Columbus School of Law, Washington D.C. J.D. 1978

Your view of the role of the court system in our society:

To preserve the rights afforded under our system of laws to all persons; to provide a forum for a speedy resolution of conflicts; and to protect the right of access to our court system. Many of the parties appear pro se before the court and I strive to make sure all are respected and given an opportunity to address the Court.

What characteristics and qualities are important to be a judge? To be an active and patient listener, make proper and prompt rulings and make sure that attorneys and pro se litigants are given a reasonable opportunity to present their case.

What motivated you to become a lawyer? A judge?

I was motivated by a sense of public service and that by becoming a lawyer I would be able to assure that parties have access to the courts to resolve problems.

Describe a day when, as lawyer, judge, or justice, you felt particularly proud or satisfied. There are several instances over the years where I assisted persons in protecting their homes from foreclosures when I was an Attorney with Legal Aid. I assisted victims of family violence to obtain protective orders when I was in the County Attorney Office. When I was with the Attorney General’s Office I was able in one case to obtain a lump sum payment of \$64,000 in a child support that had been owed for several years. As a Judge I have been able to resolve conflicts between long time dueling parties, getting them to sit down together and resolve their differences for the sake of their children.

What is your favorite book or movie? Any classical or mystery book, such as *To Kill a Mockingbird*. Movies: *Casablanca*, *Raging Bull*. Any De Niro movie.

What is your favorite way to spend free time? I like to spend time with family, gardening and walking our dog. Listening to music – all kinds – classical, opera.

Tell us about your family. My wife is a retired school teacher who continues to mentor and assist teachers at her school and church activities. I have two wonderful daughters. Both live out of town pursuing their careers. My youngest is pursuing her Master’s Degree at Texas A&M. Go Aggies!!

Start up Kit for a Small Law Practice

BY DAVID J. FERRELL
djf@elpasolaw.com

Over the years I have been on various Texas Bar Committees and I think the most rewarding adventure was the Law Practice Management Committee. Besides providing many CLE programs, Webinars and papers, the committee set up a program to visit all the Texas law schools once a year and provide third year law students with practical pointers on "Law Practice". We also published articles on the Texas Bar Law Practice Management BLOG ----> (<http://lpmnewsletter.blogspot.com>) which covered many relevant topics for rookies and long established lawyers on how to run "the office".

I have been off the LPM committee for almost a year but I stay in touch with the lawyers that still provide their insight and articles for the Texas Bar. Probably the best article on law firm start up is appropriately named, "START UP KIT FOR A SMALL LAW PRACTICE". A PDF copy of this 117 page article is downloadable from this link ----> (http://www.elpasolaw.com/new_page_17.htm)¹. Go to the bottom of the webpage and click on **Law Practice Management Handout**. The PDF table of contents has links to the many articles. The checklist follows:

Small firm law practice startup checklist

This checklist addresses only those matters that are basic when opening a new small law practice. The items listed under each heading are not intended to be exhaustive. Not all items or headings apply to every practice startup. The Law Practice Management Program's staff is available to provide further help and assistance to deal with any of the issues mentioned here, or with practice startup in general.

A. Articulate your practice vision

1. Mission / Vision / Values Statement
2. Target Market Statement
3. Core Services Statement
4. Practice Environment Statement

B. Develop your business plan and budget

1. Marketing
2. Production
3. Personnel
4. Systems and Technology
5. Communications
6. Finance & Budget

C. Implement your plan

1. Write up Partnership or SpaceSharing Agreement

2. Acquire Space
 - * Location
 - * Layout, including wiring for equipment
 - * Lease details
 - * Signage
3. Acquire Furniture
 - * Lawyer
 - * Secretary
 - * Client areas (reception, meeting room)
 - * Filing cabinets, safe
4. Acquire Supplies
 - * Paper supplies (stationery, envelopes, business cards, note pads, telephone message pads, postit pads, etc.)
 - * Other supplies (paper clips, scissors, tape dispensers with tape, staplers, staples, staple removers, pens, pencils, erasers, calculators, computer disks, letter openers, hole punch, book ends, etc.)

5. Acquire Software

- * Word processing
- * Time and billing
- * Accounting
- * Calendaring / Docket control
- * Conflict checking
- * Client and file information

6. Acquire Equipment

- * Computers, printer, modem, network, backup
- * Costrecovery devices
- * Telephone
- * Facsimile
- * Copier (with collator, document feeder)
- * Postage scale, meter
- * Dictation Equipment

7. Acquire Insurance

- * Commercial Property and General Liability Insurance
- * Business Auto Coverage
- * Professional Liability Insurance
- * Workers Compensation and Employer's Liability
- * Commercial Umbrella Coverage and Excess Policies

* Health, Disability and Life Insurance: State Bar Insurance Trust

- 8. Acquire Legal Resources
 - * Texts, reports, digests, periodicals
 - * Computer research (WestLaw, LexisNexis)

* MyTexasBar.com (FindLaw)

9. Arrange for Services
 - * Process Server
 - * Investigator
 - * Courier
 - * Court Reporter
 - * CPA
 - * Accounting Staff/ Clerical Support Staff
10. Court Information
11. Develop PaperHandling Systems
 - * File opening
 - * Filing
 - * Mail, FAX, and deliveries
 - * Phone messages
 - * Receipt journals for incoming monies, client documents and property
 - * Log for outgoing client documents and property

12. Develop Client and File Information Systems

- * File index or data base
- * Client index or data base
- * Conflict of Interest Procedures

13. Develop Time Management Systems

- * Dual calendar for appointments and appearances, etc.
- * File calendaring system
- * Limitations and deadlines system
- * Timekeeping
- * Case planning

14. Start Policies and Procedures Manual

15. Develop Systems for Legal Procedures
 - * (e.g., real estate checklists)
16. Develop Personnel Policies
 - * Job Descriptions
 - * Salaries and benefits
 - * Workplace policies
 - * Confidentiality policy
 - * Hiring (recruiting, interviewing, selecting, negotiating terms, etc.)

* Orienting, training, supervising, evaluating

- * Payroll policies
- 17. Make Banking, Credit Arrangements
 - * Open trust and general accounts
 - * Check into IOLTA requirements
 - * LOC/ bank or family loan/ overdraft
 - * Office credit cards

18. Develop Bookkeeping / Accounting Procedures

* Trust accounting procedures

* General accounting procedures (timekeeping, disbursements, billing procedures and cycles, accounts receivable, revenue and expenses posting, monthend procedures, payroll)

19. Develop Financial Information System

* Aged accounts receivable, aged work in progress, monthly cash and credit analysis, monthly budget analysis

* Accounts receivable followup

20. Establish Pricing Policies

* Setting Fees

* Disbursements recovery policies

21. Establish Client Relations Policies

* Communicating fees and deadlines to clients

* Engagement, nonengagement and disengagement letters

* Copies to clients policies

* Documents packaging policies

* Phone call return policy

22. Register with Lawyer Referral

23. Announce Your New Practice

* To existing clients

* To lawyers and judges

* To potential clients

* To the public

24. Start Marketing

* Open house

* Yellow pages

* Advertising

25. Seek Out State Bar Help

* Management Advisors

* Assistance

1. Abundance of Redundance Citation

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DAVID J. FERRELL is an El Paso attorney specializing in probate and criminal law. He also assists law firms in development of their computer trial and law office technology. He serves on the WEB Services Committee of the State Bar of Texas.

Myer J. Lipson: a lawyer's lawyer!

BY JUDGE OSCAR G. GABALDÓN, JR., CWLS

"This is the true joy in life - being used for a purpose recognized by yourself as a mighty one; being thoroughly worn out before you are thrown on the scrap heap; being a force of nature instead of a feverish selfish little clod of ailments and grievances complaining that the world will not devote itself to making you happy." It is this admirable description of a caring soul, as related to us by the Irish playwright George Bernard Shaw, which Myer Jack Lipson has tried to live day in and day out. An active member of the El Paso Bar Association board of directors, Lipson brings a tremendous amount of exemplary professional and community service to the bar and the El Paso community in general.

After receiving his Bachelor of Business Administration from the University of Texas at Austin in 1968, Lipson went on to pursue and obtain his law degree, in 1972, from the same first rate university. After about a couple of years serving as an Assistant District Attorney for the 34th and 205th Judicial Districts, where he prosecuted felony murder and sexual assault crimes, Lipson, together with James "Jim" R. Dallas, helped form the law firm of Lipson & Dallas, P.C., which eventually grew to a firm of eight partners. He states "With retirement, and leaving the practice of law for most of the former shareholders, I am now the sole remaining shareholder." Licensed to practice before several courts, including the United

States Supreme Court and the United States Court of Appeals (5th Circuit), Lipson has made his mark in our legal community as a truly outstanding "lawyer's lawyer."

Lipson is a diehard believer in the importance of the El Paso Bar Association, which he describes as an organization that is "an umbrella organization for all Bar and legal activities in El Paso County." Along these lines, Lipson states "I feel strongly that the practice of law is a profession, not merely a business. Unfortunately, the image of our profession is not stellar. In order to enhance the image of our profession, as a whole, the El Paso Bar has the ability to provide public outreach through service to the community in the form of promoting legal clinics for the underprivileged, under served, and military veterans, speakers' to schools, foster legal programs at UTEP, and provide other outreach programs to the community."

Lipson believes that "The Bar also promotes civility and professionalism among the members of our legal community. These are important issues and programs and a part of the reason I belong to the El Paso Bar Association. I enjoy the camaraderie of fellow lawyers, and am proud to identify myself as a member of the El Paso Bar." In his role as a board member of the El Paso Bar Association, Lipson has been a "go getter" in the bar association, taking on all sorts of responsibilities, including chairing the

bar association's strategic planning committee "to create the mission, vision, and structure of the EP Bar Association, which will guide it in the future."

Lipson is a recipient of numerous recognitions and honors, including the El Paso Bar Association 2010-2011 President's Award for commitment, dedication, and service to the bar association, Tree of Life Recipient from the Jewish National Fund, Who's Who in American Law, and the Society of Fellows Anti-Defamation League, to name a few. Moreover, Lipson's involvement with an array of organizations, such the El Paso Holocaust Museum and Study Center, of which he was President, and serving the Alzheimer's Association as an Advisory Director, among other notable groups, are just a few examples of his consistent dedication to the service of others.

Lipson is married to his love, Beth Rubin. A true family man, Lipson deeply cherishes his children, Shane and Shelby, and adores his three grandchildren, Marshall, Ross, and Asher. His love for his family is paramount; however, he also deeply cares about his profession. He says, "I tell other lawyers to be proud of belonging to a noble profession. You have the opportunity to help other people, less fortunate than yourself, so get involved in organizational work, whether it is the EP Bar, MABA, TYLA, or any other of the specialty bars. Just join, and once you

join you will realize the impact you can make on your legal profession, and your community. You will be rewarded in the long run.”

A man of exalted principles and ideals, Lipson embodies the spirit of service. Madame Marie Curie so insightfully states, “You cannot hope to build a better world without improving

the individuals. To that end, each of us must work for our own improvement and, at the same time, share a general responsibility for all humanity, our particular duty being to aid those to whom we think we can be most useful.” Lipson would be the first to agree with this observation.

OSCAR GABALDÓN is an Associate Judge of the 65th District Court responsible for overseeing the trial of Child Abuse and Neglect cases. He is certified by the National Association of Counsel for Children as a Child Welfare Law Specialist (CWLS).



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LAW DAY AWARDS

If you would like to honor an attorney or a judge please nominate them. Awards will be presented at the Law Day Dinner on Saturday, May 5th at the DoubleTree Hotel. Send your nominations for **Outstanding Young Lawyer, Outstanding Jurist, Outstanding Senior Lawyer, Outstanding Lawyer, Outstanding Pre-Law Student, and Liberty Bell Award** to Carlos Quinones, President of El Paso Young Lawyers, carlos.quinonez.law@gmail.com. Send your nominations for **Professionalism Award, Pro Bono Award, The Honorable Enrique H. Pena Mediator of the Year Award, Outstanding Federal Attorney and Outstanding State Attorney** to Nancy Gallego, ngallego.epba@sbcglobal.net or nancy@elpasobar.com

OUTSTANDING YOUNG LAWYER:

Please consider the following criteria: The nominee must be licensed to practice in Texas and must be 36 years of age or younger, or is in his/her first five years of licensure, regardless of age, on June 1, 2009. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession, and service to the community.

OUTSTANDING JURIST:

Please consider the following criteria: The nominee must be currently serving as an active Administrative, Federal or State Judge. The nominee cannot be standing for election or reelection during the year in which the award is given. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession, and service to the community.

OUTSTANDING SENIOR LAWYER:

Please consider the following criteria: The nominee must be licensed to practice in Texas. The nominee must have practiced law for 30 years or be over the age of 60 and have practiced law for 15 years. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession, and service to the community.

OUTSTANDING LAWYER:

Please consider the following criteria: The nominee must be licensed to practice in Texas. The nominee must be aged out of the Young Lawyer category (i.e., over 36 years of age on June 1, 2009), but not yet eligible for the Senior Lawyer category. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession, and service to the community.

OUTSTANDING PRE-LAW STUDENT (The Cori A. Harbour Award):

Please consider the following criteria: The nominee must be a student enrolled in an institute of higher learning who plans to study law after graduation. In addition, while all outstanding qualities are considered, particular attention is given to service to the community, service to the profession, academic ability, maturity, and integrity.

PROFESSIONALISM AWARD:

Please consider the following criteria: The nominee must be licensed to practice in Texas. He or she is a person who best exemplifies by conduct and character, truly professional traits that others in the bar seek to emulate. The nominee should be an inspiring role model for the bar, respected by his or her peers, and someone who makes us proud of the legal profession. Nominations can be based on a lifetime, or a specific occurrence of professionalism. In addition, attention is given to service to the profession and service to the community.

PRO BONO AWARDS:

These awards honor individuals and law firms (large and small) for the volunteer work they do. Please consider the following criteria: Number of hours of pro bono work done, as well as, the volunteer attitude and effect of the nominee's pro bono work. In addition, attention is given to service to the profession and service to the community. These awards will be selected by the Pro Bono Committee of the El Paso Bar Association to honor those who have given so much to the El Paso community during the 2009-2010 Bar Year.

THE LIBERTY BELL AWARD:

The award is given to a non-attorney who has made a contribution to the legal community.

Your nominations are sincerely appreciated and will help us recognize and give credit to deserving judges, lawyers and others who have made a positive impact on our profession and community.

THE HONORABLE ENRIQUE H. PEÑA MEDIATOR OF THE YEAR AWARD:

These awards honor an attorney and a nonattorney mediator for their work in 2009- 2010. Please consider the following criteria: Effectiveness in mediation, allowing all sides to be heard in the mediation process, and contribution to promoting use of alternative dispute resolution as an alternative to litigation. In addition, while all outstanding qualities are considered, particular attention is given to exemplified professional proficiency, service to the profession, and service to the community.

These awards will be selected by the ADR Committee of the El Paso Bar Association.

OUTSTANDING FEDERAL ATTORNEY:

Please consider the following criteria: The nominee must be licensed to practice in the State of Texas. The attorney must work in one of the Federal offices. He or she is a person who best exemplifies by conduct and character, truly professional traits that others in the bar seek to emulate. Please send your nominations to Nancy at the El Paso Bar Association office.

OUTSTANDING STATE ATTORNEY:

Please consider the following criteria. The nominee must be licensed to practice in the State of Texas. The attorney must work in one of the State offices. He or she is a person who best exemplifies by conduct and character, truly professional traits that others in the bar seek to emulate. Please send your nominations to Nancy at the El Paso Bar Association office.



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RSVP by Wednesday, April 25, 2012

For questions, contact Nancy at
nancy@elpasobar.com or 532-7052.