

THE WOMEN'S ADVOCATE A CATALYST FOR 2012 – 2013

Women and the Law Section Newsletter
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A MESSAGE FROM YOUR CHAIR

by Alison Colvin



Balance:

- a) a state of equilibrium or equipoise;
- b) mental steadiness or emotional stability; habit of clam behavior, judgment, etc.;
- c) being in harmonious or proper arrangement or adjustment, proportion

Balance is something we all strive for, as women or men, as lawyers or otherwise. As we all know balance is what makes happy, grounded, focused and effective individuals. Whether it is the balance of law and family, spouse and children, work and play—it is integral. The Women and the Law Section would like our members and others to begin to think about the balance in their lives and the balance for which they strive. At our upcoming Annual Meeting in June, our Section will present a CLE presentation on Balancing Life and Law, which will include a panel discussion of distinguished guests from various communities in Texas, including Dallas, as well as outside the state of Texas. Our panel will consist of a law professor, internal medicine doctor, and lawyers who have worked part-time and in-house who will discuss legal ethics, law practice management, and ways to be a healthy and effective lawyer. Our goal is for everyone to learn how to strike the right balance which would lead to a healthier, happier, more productive personal and professional life. We hope you can join us.

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CHECK IT OUT!

by Tonya D. Carter-Clary, Newsletter Editor



It is without a doubt that the economy has affected many businesses in almost every profession in Texas and across America. The legal profession is no exception. This year the WAL Section is focusing on living a happier, healthier, and more productive life by having the appropriate work/life balance. Although having the appropriate work/life balance is vital, it is sometimes difficult to balance the two if one aspect of the equation is waning, especially in your work life. Making sure your business affairs are in order is important, but perhaps it's not-so-easy to figure out how to go about doing it. And by "it" I am referring to making sure you and your business are operating at its best.

If you haven't had the opportunity to read the recent issue of the *Texas Bar Journal* (March 2013, Vol. 76, No. 3) I advise you to pick up a copy and read some of the articles featured in the issue as it relates to business success and how to succeed as a lawyer, even in a down economy. Please take an opportunity to read the latest *Journal* in print, or online at www.texasbar.com/tbj. Suggested reads to check out:

"21 Steps: How to Succeed as a Lawyer"

Boyd, R. (2013, March). 21 Steps: How to Succeed as a Lawyer. *Texas Bar Journal*, 181-184.

"The Top 10 Things I Wish Someone Had Told Me When I Began Practicing Law"

Ketner, T. (2013, March). The Top 10 Things I Wish Someone Had Told Me When I Began Practicing Law. *Texas Bar Journal*, 200.

"What Are You Doing To Help Your Business In This Troubled Economy"

Carter, S. (2013, March). What Are You Doing To Help Your Business In This Troubled Economy. *Texas Bar Journal*, 271-272.

DO YOU KNOW A TRAILBLAZER?

(trail-blaz-er – An innovative leader in a field; a pioneer.)

The Women and the Law Section is looking for women lawyers from Texas who would be considered a TRAILBLAZER in the legal profession. Do you know any? We would love to shine a spotlight on our Texas Trailblazers in an upcoming Newsletter and/or on our Website. Please send submissions (no more than one to three short paragraphs, and photo, if any) to the email address below:

Tonya Carter-Clary, Newsletter Editor
attorneydccc@gmail.com
RE: TX Trailblazer

WHOSE TWEET IS IT ANYWAY?

By Andrea "AJ" Johnson

Who owns the tweets, sites, blogs and other media accounts that may be designed or intended (at least by the company) to promote its business? You may say that the answer to this question is clear, except that a lack of clarity has resulted in two hotly contested and expensive lawsuits between employers and former employees, who both claim ownership in certain electronic communication created by the individuals when they were employees and done, reportedly, on behalf of the company.

Company branding, advertising, and client outreach change by the second as electronic and other media expand exponentially. Today employers are using Facebook, YouTube, LinkedIn, and Twitter, to name a few, to spread the good company word. In fact, marketing managers and others in an organization are being encouraged, and, in some cases, specifically hired, to tweet, blog, text and generally positively comment and promote their employers. In the midst of this electronic social media blitzkrieg, best practices gurus harangue that there must be a "social media policy (!)" but, to date, those policy concerns generally have focused on unwanted or unprofessional employee language.

The question is: **Are company policies broad enough to include concepts of "ownership" in the social media communication of employees done on behalf of the company?**

We routinely ask for badges, documents, computers, cars, phones and other company property at termination. Do we also ask for the Twitter or Facebook passwords, too? *Or is it too late by then?*

Currently there are two cases in which the employer is at odds with former employees over the rights to Internet accounts. There is no clear-cut answer yet in either case, because, as it turns out, the rules for Internet comments by the two employees in question were not worked out, in writing, at the beginning of the employment relationship (or ever). The parties were left with arguably undefined Internet accounts and verbal "he said/she said" disputes.

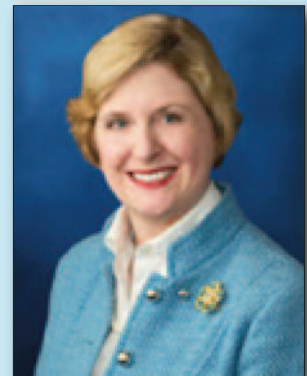
In *PhoneDog, LLC v. Kravitz*, cause no. 3:11-cv-03474-MEJ, pending before the federal court in Northern California, the question is whether Noah Kravitz or PhoneDog has a right to the Twitter account that Kravitz created and managed while he worked for PhoneDog; this account had over 17,000 followers when Kravitz, who was hired to promote the company on social media, quit. After his resignation, the Twitter handle of "PhoneDog_Noah" became simply "noahkravitz," and Kravitz continued to lay claim to the Twitter postings, account, and followers. Denied access to the Twitter account, PhoneDog claimed that Kravitz had damaged the company by "taking" these Twitter groupies, and it sued Kravitz for misappropriation of trade secrets, intentional and negligent interference with prospective economic advantage, and conversion. Currently the parties are attempting to resolve the case through mediation.

In *Eagle v. Morgan, et al.*, cause no. 2:11-cv-04303-RB, pending before the federal court in Eastern Pennsylvania, similar issues are at stake, but a LinkedIn account is the focus. The employer is EdComm Inc., which contends that the LinkedIn account contains valuable business

Continued on page 4.



With more than 120 attorneys in offices in Houston, San Antonio, Midland, Pittsburgh, and Denver, **Burleson LLP** is the largest full-service law firm in the country devoted specifically to the oil and gas sector. We are unique in being on the ground in the key markets serving the unconventional shale plays, and bring a distinct blend of legal understanding and technical skill to our practice. Our attorneys have worked as petroleum engineers, chemists, landmen, and geologists, and more than a third have served as inside legal counsel for oil and gas companies. These qualifications – combined with Burleson's broad geographic reach and comprehensive scope of services – have earned the firm a reputation for providing clients with the most seasoned, energy-specific legal services team the industry has to offer. *For further information, visit www.burlesonllp.com.*



Andrea "AJ" Johnson, a partner at Burleson LLP, focuses her practice on management representation in the employment law area. Ms. Johnson is a recognized speaker and writer on the spectrum of employment issues, focusing on both litigation and preventative analysis creating company best practices. An "AV" rated attorney and selected for membership in the Bar Register of Preeminent Women Lawyers, Ms. Johnson has been practicing law since 1983, and she has been a Texas *SuperLawyer* in employment law for five years, beginning in 2008 till the present.

information; for her part, former employee Eagle alleges that she was damaged when the company improperly changed the password on her “personal” account and replaced her photo with someone else. As with PhoneDog, EdComm brought various business torts against Eagle – such as misappropriation, conversion, and unfair competition. The case may go to trial next month, if the court does not dismiss it based on pending motions.

Solutions? As with most employment issues, a front-end “think through” is the best remedy. Setting the ground rules is the key. Some good steps to take are the following:

- Clearly identify the work and expectations for employees -- then both the employer and employee will understand what the employee is to do and to what sites, if any, he/she may be required to post. Determine the kinds and nature of the posts that the company expects. *Will personal commentary, along with company-endorsed discussion, be permitted?* If private and company commentary are mixed, make it clear to the employee that, no matter what is posted on a particular company-related site, all will be treated as company property and any followers or interested parties will “belong” only to the company, not to the employee.
- Identify what particular accounts belong to the employer, and mandate that all passwords be delivered to the employer *at any time* requested, along with easy access into such sites whenever requested by the employer.
- Notify the employee, in writing, that postings are done “at the behest and on behalf of” the employer – so, not only must the postings meet company expectations for appropriate language, but all postings belong to the company.
- Advise that at any time (and particularly at termination) the employee must surrender or turnover to the employer the identified accounts.
- Link all company policies and procedures to such outside sites and postings – in this way, confidentiality, trade secret protection, anti-harassment, and other relevant policies are tied to employee activity on the ‘Net.
- Notify the employee that there is no reasonable expectation of privacy in any such identified company sites, as the sites and accounts are not deemed to be private accounts; they are company accounts set up for company purposes.
- Present a reminder notice to departing employees, letting them know what the company expects as to these accounts, and consider adding a line in all severance agreements mandating that all passwords be turned over as part of the separation.
- Avoid blurring the lines between company sites and accounts and those used personally by employees, who may also comment about their employer on their private accounts. Companies have to recognize that encouraging such “private” tweeting or blogging may prevent the company from asserting a right of ownership to the site, posts, or followers of such “private” account.

The bottom line is that Internet posts and sites created for company advertising and promotion are no less valuable property than the desks and computers in an office. In fact, as sites and posts like that are critically connected to customers and company goodwill, they are arguably much more valuable than mere office equipment. Thus, the loss of a LinkedIn or Twitter account may have a significant negative impact on a company’s marketing efforts. To protect these posts and sites, a company has to treat them as the valuable commodity that they are, keeping control over them from the beginning to the end of any employment relationship.

AWARDS NOMINATIONS

The Women and the Law Section is seeking nominations for the **Sarah T. Hughes Women Lawyers of Achievement Award** and the **Ma'at Justice Award**. These awards will be presented at the **State Bar of Texas Annual Meeting** in Dallas on June 20, 2013 during our section's annual meeting.

The **Sarah T. Hughes Women Lawyers of Achievement Award** recognizes women who have achieved excellence in their fields while paving the way for other women lawyers to be successful. The impressive list of past recipients includes Louise Raggio, Harriet Miers, Barbara Jordan, Justice Ann McClure, Jeanne C. "Cezy" Collins, and last year's honoree, Patricia Diaz Dennis.

The **Ma'at Justice Award** is for contributions of a lawyer or of an association of lawyers toward the furtherance of justice in our society. An equally impressive list of past recipients includes Jonita Borchardt, Ralph H. Brock, Paula W. Hinton, Judge Midgalia Lopez, Justice Deborah Hankinson, Ileta Sumner, and last year's honoree, Anne Chandler.

You can find more information on these awards and past recipients of each on the [Women and the Law Section website](#).

If you know of someone deserving of either of these awards, please [email Carolyn F. Moore](#). Please include at least the following: (1) the nominee's name; (2) the nominee's contact information; (3) a brief description of why the nominee should receive the award; and (4) any other information that you believe would be helpful to the council in making its decision. **Nominations close on May 1, 2013.**

Best regards,

Alison Colvin
Chair, Women and the Law Section
State Bar of Texas

WOMEN AND THE LAW SECTION

Annual Meeting Events

June 20-21, 2013

Hilton Anatole

Dallas, Texas

THURSDAY – HALF-DAY EVENTS (MORNING)

Women and the Law Section

9:00 Co-sponsor of Diversity Forum

THURSDAY – HALF-DAY EVENTS (AFTERNOON)

Women and the Law Section

1:00 **Section Membership Meeting**

2:00 **Finding Balance: Strategies for an Ethical Law Practice**

1 hr (.25 ethics)

A panel will discuss legal ethics, law practice management, and ways to be a principled and effective lawyer.

Prof. Deborah Calloway, *Hartford, CT*
University of Connecticut School of Law

Dena DeNooyer Stroh, *Dallas*
Murchison Oil and Gas, Inc.

Christy Jump, *Dallas*
Jackson Walker L.L.P.

Elizabeth Race, M.D., MPH, *Dallas*
Internal Medicine/Infectious Disease, AHF Health Care Center

THURSDAY – EVENING EVENTS

Women and the Law Section

Thursday Receptions

All receptions begin at 5:30 and will be held at the Hilton Anatole unless otherwise noted.

IN THE KNOW...

- Congratulations to WAL Board member Angela Webster who gave birth to a 7 lbs. 12 oz. baby girl on December 4, 2012.
- Congratulations to current WAL Chair Alison Colvin for being named one of the Texas Rising Stars for 2013. Our Section is also proud to announce that Ms. Colvin was recently elected as Section Representative for the State Bar — Medium Sections.
- Congratulations to WAL Board member, Deborah Race, for making the Texas Super Lawyers list for the seventh year in a row.
- Congratulations to WAL Board member Hon. Judy Ney for making the Texas Super Lawyers list for the fifth year in a row.
- Congratulations to WAL Board member Chelsea Garza for being named one of the Texas Rising Stars for 2013.
- In memory of Attorney Gaynelle Griffin Jones, WAL's 1998 recipient of the Sarah T. Hughes Award, has died. Ms. Jones was appointed by President Bill Clinton in 1993 as the first black woman to be United States attorney for the Southern District of Texas. The 64-year-old Houstonian was also the first black woman to serve on the First Court of Appeals in Texas. Our deepest condolences to her family.
- Has your membership expired? Would you like to recommend membership to a colleague? Full Membership is \$20 for one year (if you have been licensed less than one year, your first year is free) and a Student Membership is \$5. Membership year is June 1st to May 31st. You can download an application from our website.
- Want to know more about the Women and the Law Section? Check out our website at www.txwomenlawsection.org

Are you a WAL Section member and have something you would like to share with the rest of Membership (i.e. Awards; Honors; Employment move or office relocation; Upcoming CLE speaking engagements; Employment search: hiring or seeking, etc.)? Our newsletter reaches over 800 WAL members from across Texas. Please send your announcement(s) to:

Tonya D. Carter-Clary, Newsletter Editor

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Re: IN THE KNOW