

THE WOMEN'S ADVOCATE

A CATALYST FOR 2015 – 2016



Women and the Law Section Newsletter
www.txwomenlawsection.org

SPRING

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2015 - 2016 WAL OFFICERS AND COUNCIL

CHAIR

Chelsie King Garza
CHELSIE KING GARZA, P.C.
3663 N. Sam Houston Pkwy E
Houston 77032
(713) 893-8808

CHAIR-ELECT

Annie McAdams
STEELEMAN & MCADAMS
5851 San Felipe, Suite 210
Houston 77057
(713) 785-6262

VICE-CHAIR MEMBERSHIP

Stephanie Gonzalez
BURLESON LLP
112 E Pecan St., Ste. 700
San Antonio 78205 1552
(210) 870-2615

SECRETARY

Carolyn Moore
TEXAS DEPARTMENT OF INSURANCE,
DIVISION OF WORKERS' COMPENSATION
P.O. Box 959
Lubbock 79408-0959
(806) 744-4569, ext. 600

TREASURER

Judy L. Ney
TEXAS DEPARTMENT OF INSURANCE DIVISION
5425 Polk St., Ste.130
Houston 77023-1423
(713) 924-2200

CHRONOLOGIST

Deborah Cordova
KITTLEMAN THOMAS, PLLC
PO Box 1416
McAllen 78505
(956) 632-5010

AWARDS

Judy L. Ney
TEXAS DEPARTMENT OF INSURANCE DIVISION
5425 Polk St., Ste.130
Houston 77023-1423
(713) 924-2200

NEWSLETTER EDITOR

Angie Webster
HICKS THOMAS, LLP
700 Louisiana St., Ste. 2000
Houston 77002-2723
(713) 547-9100

IMMEDIATE PAST CHAIR

Nora Bryant
RASH CHAPMAN SCHREIBER
LEAVERTON & MORRISON, L.L.P.
2112 Rio Grande
Austin 78705
(512) 477-7543

COUNCIL TERMS EXPIRING 2016

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Board Advisor

Alison Colvin
COLVIN, CHENEY SAENZ & RODRIGUEZ LLP
1201 E. Van Buren
Brownsville, TX 78520
(956) 295-3070

Alternate Board Advisor

Sylvia Firth
CITY OF EL PASO
P.O. Box 1890
El Paso 79901
(915) 212-0033

CHAIR'S CORNER



Lessons from the Past – History of Women in the Law

Throughout history, women had to campaign and fight long and hard to work as attorneys. First there were barriers to allowing women into law school then laws prevented them from practicing in their own right without being attached to a male lawyer to make her work legitimate.

Some common themes emerge for women who are compelled to fight inequality and underrepresentation. For decades, women finish law school, pass the bar, and then they are unable to find work in many area unless they start their own firms. Or they are given the opportunity, such as in WWII, when male attorneys were called to be soldiers and the women were there to take their places, but only until the men returned and the women were pressured, and expected to give up their jobs and return home to take care of children.

Many women lawyers were unable to find jobs in Texas, so they relocated to New York City and then after establishing themselves and proving their skills and knowledge of the law, they were able to return home to Texas and were able to continue working in the law.

Minority women lawyers, especially African American and Hispanic, sought out the law to influence change and champion unjust laws. There is a rich history of the achievements of women and the groundbreaking laws and policies they effected.

Appropriate attire for the courtroom was something that plagued early lawyers. Even the Ladies Home Journal discussed proper attire for professional women. To this day, speakers often address proper attire for women in the courtroom, only now we talk about open toe shoes and pantyhose.

Further reading available online at:

[http://www.txwomenlawsection.com/
Resources/Helpful-Articles](http://www.txwomenlawsection.com/Resources/Helpful-Articles)

Don't forget to join us at the Annual Meeting!

STATE BAR OF TEXAS ANNUAL MEETING
FORT WORTH, JUNE 16-17, 2016

Women and the Law Section
Presents: June 17th 10:30-11:30am
Representing the Unpopular Client

FEATURING: CHIP BABCOCK, RUSTY HARDIN,
BEATRIZ SOSA-MORRIS, & CHAD BARUCH

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EVALUATING DECISION TO APPEAL (TOP TEN REASONS TO SAY NO)

BY DEBORAH RACE

10. Trial lawyer calls and says he thinks he made a mistake and wants you to fix it.
9. Trial lawyer calls and says the client insists on appealing, but lawyer isn't sure.
8. Trial lawyer calls and says he will draft the brief - will you just "clean it up" and sign.
7. Trial lawyer calls and says the case is great, but the client is a bit challenging.
6. Trial lawyer or potential client calls and says judge is horrible, crazy, out to get him, too cozy with opposing counsel or a variation of this theme.
5. Potential client calls and says trial lawyer recommended he appeal and suggested some names.
4. Potential client calls and says everyone lied at trial and he can prove it.
3. Potential client calls and says opposing counsel (or his counsel) lied and he has filed a grievance against them.
2. Potential client calls and says he has all sorts of new evidence and/or witnesses that can win the case.
1. Potential client calls and cites case law and/or statutes and says not only can he help, but demands to approve every facet of the brief before filing.

Other Considerations:

In order to have sufficient time to fully evaluate the matter and to give the trial court every opportunity to change its mind, you should file a motion for new trial, and where appropriate, a request for findings of fact and conclusions of law. Then you will have 90 days, rather than 30 within which to perfect the normal appeal.

When evaluating whether to appeal, you should also consider what you want, what you are trying to set aside and what can really be achieved by an appeal.

For example, custody issues are often not ideal for appeals since you can usually go back in and ask the trial court to reconsider before the appeal is concluded.

Also, a mandamus is something to pursue with caution. You are asking the appellate court to find the trial court abused its discretion, and this is the very same trial court you will be before later.

Appealing a temporary injunction is also something to consider carefully. You may be able to get the trial resolved sooner. Plus, if you do elect to proceed, you may be saddled with findings the trial court made for any future proceedings. In effect, when you are faced with a temporary injunction following a developed hearing, you actually have two choices, either take the interlocutory appeal or proceed to a trial on the merits.

Consider the time and costs involved in an appeal. I remain amazed at some attorneys who still estimate appellate fees in a pleading at a few thousand dollars. Then that same client, or even trial counsel, will call and see if you can handle the appeal for \$3,000. An average appeal takes approximately 50 hours and often much more, so the math doesn't add to \$3,000.

Complimentary Happy Hour



Join us at the Home of Lisa Blue
5950 DeLoache Avenue
Dallas, TX 75225

5:30-7:30pm
April 8, 2016

You must be a member to attend.
RSVP required by April 6, 2016 to alucas@ttla.com

THE LAW OF MENTAL HEALTH

By Angie Webster

I recently learned about an incredible member of the legal profession, Professor Elyn Saks. Professor Saks is Associate Dean and Orrin B. Evans Professor of Law, Psychology, and Psychiatry and the Behavioral Sciences at the University of Southern California Gould Law School. Her many accomplishments (which are too numerous to list here) include a law degree from Yale and an award-winning best-selling autobiography.¹ Yet, one of the most remarkable things about Saks is that she has achieved so much, about which most of us can only dream, while living with schizophrenia.

I discovered Saks' story and others like it for the first time recently when a member of my own family was hospitalized for treatment of schizophrenia. Until that time, I did not know that people diagnosed with schizophrenia and other serious mental illnesses were capable of living not only normal lives, but extraordinary ones. It gave me a tremendous amount of hope for my family member and others struggling with severe mental illness. That experience also demonstrated how difficult it can be to get life-saving treatment for a mentally ill family member.

Symptoms of schizophrenia often become prominent during the late adolescent years or in an individual's early twenties. Because onset of the disease frequently occurs during legal adulthood, privacy laws prevent doctors from openly sharing information about the diagnosis, symptoms, and treatment options with parents or other concerned family members. As a result, family and other potential caretakers may only know what the mental health services consumer² chooses to share. Without knowledge of the mental illness, families cannot take action to help their loved one get the treatment he or she needs. A consumer's circumstances usually must get far worse—in many cases life-threatening—before family members can compel hospitalization and facilitate treatment.

In Texas, a family member or other adult may apply for a mental health warrant requesting emergency detention and court-ordered involuntary commitment and treatment when a potential consumer is both mentally ill and a substantial risk of serious harm to himself or others. The application must provide: (1) a specific description of the risk of harm; (2) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained; (3) that the applicant's beliefs are derived from specific recent behavior, overt acts, attempts, or threats; (4) a detailed description of the specific behavior, acts, attempts, or threats; and (5) a detailed description of the applicant's relationship to the person whose detention is sought.³ In Harris County (where I have personal experience with this process), an affidavit attesting to these facts is a mandatory part of the application.

The application must be presented in person by the applicant to a magistrate, who may then order immediate apprehension and transportation of the consumer to a mental health facility. A person apprehended under this procedure undergoes a preliminary examination and may be detained no longer than 48 hours, unless an Order of Protective Custody (OPC) is obtained.⁴ A motion requesting an OPC must be accompanied by a certificate of medical examination for mental illness prepared by a physician who has examined the proposed patient not earlier than the third day before the day the motion is filed. Even after this process is complete, the hospital can only keep the consumer until he or she is "stable." This often leaves caretakers with no medical training to manage the mentally ill consumer who may still be in crisis. In our case, doctors decided my family member was "stable" only four days after being admitted to the hospital. Less than a week later, he was back in the ICU with serious self-inflicted injuries.

The process of obtaining a mental health warrant and involuntarily committing someone presents a lot of legal hoops to

¹ If you are interested in learning more about Elyn Saks or schizophrenia, I highly recommend her autobiography, *The Center Cannot Hold: My Journey Through Madness*, and her TED talk, *A tale of mental illness – from the inside*, available at https://www.ted.com/talks/elyn_saks_seeing_mental_illness?language=en.

² Mental health patients are often referred to as "consumers." The term is meant to empower them as individuals seeking treatment for their disease by indicating that "consumers" are voluntarily obtaining mental health services for their disease.

³ TEX. HEALTH & SAFETY CODE ANN. § 573.011.

⁴ *Id.* §§ 573.021(b), 574.021.

jump through to obtain relief, particularly for someone who is dealing with a family member in crisis and in need of emergency treatment and stabilization. The current system does not serve the best interests of Texans facing debilitating mental illness. What's even more discouraging is that Texas laws closely resemble the laws of other states and, consequently, mentally ill Americans nationwide are underserved. I now recognize that the legal system is broken in this area, and we are in desperate need of change.



REQUEST FOR AWARD NOMINATIONS

The Women and the Law Section is seeking nominations for the **Sarah T. Hughes Women Lawyers of Achievement Award** and the **Louise B. Raggio Award** (formerly known as the Ma'at Justice Award). These prestigious awards will be presented at the [State Bar of Texas Annual Meeting](#) in Fort Worth on June 17, 2016, 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 **Louise B. Raggio Award** is for contributions of a lawyer or of an association of lawyers toward the furtherance of justice in our society.

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

If you know of someone deserving of either of these awards, please email [Judy Ney](#) and 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, 2016.

Women and the Law Telephonic CLEs

May 12, 2016 10:00 am (1 hour CLE)

"Where is the line drawn for independent contractors/employees and the workers' compensation bar to negligence lawsuits between general and subcontractors and workers?"

TIC Energy and Chemical, Inc. v. Martin, No. 15-0143 pending in the Supreme Court of Texas and whether agreements by which a general contractor provides workers' comp coverage for a subcontractor and its employees protects the subcontractor from a negligence claim by the general contractor's injured employee and the reverse.

Presented by: Brad McClellan
Of Counsel, Law Offices of Richard Pena, P.C.
brad.mcclellan@yahoo.com

September 15, 2016 10:00 am (1 hour CLE)

The First Chapter of a Divorce Case – Temporary Orders

- What's the impact of the Temporary Restraining Order?
- Who gets to stay in the house?
- Fighting for Custody? – Do's and Don'ts
- What rights do parents have regarding the children before there's a court order?
- How much child support will be ordered?
- How much temporary spousal support will be ordered, if any?
- What impacts the rights and duties of the parents?
- What circumstances would support modifying a Standard Possession Order?
- How do bills get paid during the divorce?
- How do attorney's fees get paid during the divorce?
- Do you have to attend mediation before a Temporary Order hearing?

Presented by: Lauren Waddell
Partner
Fullenweider Wilhite
4265 San Felipe Street, Suite 1400
Houston, TX 77027
713-624-4100
713-609-1234

November 10, 2016 10:00 am (1 hour CLE, with .25 Ethics)

Proving Up and Appealing Attorney's Fees

With attorney's fees awards growing in size, it is no longer uncommon that a request for fees be as large, if not larger, than the underlying claim for damages. As such, lawyers in Texas need to be aware of this developing body of statutory and case law to prove up and keep the awards they receive, or protest and reverse the awards against their clients.

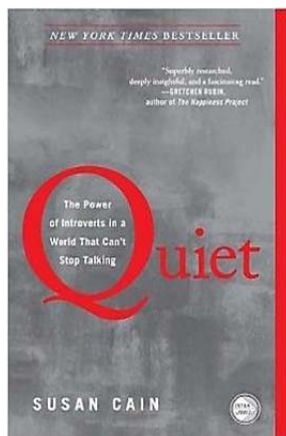
- Recent Developments in Federal Courts and differences from State Court;
- What is a prevailing Party;
- Chapter 38 updates;
- Anti-SLAPP;
- Offers of Settlement;
- Rule 91a dismissals;
- Interest on fees;
- Superseding fees;
- Proving up fees – practical considerations
- Proving up fees under *El Apple*; and
- Ethical Considerations in proving up fees – changing hats from advocate to witness.

Presented by: Tanya Garrison
Wycer, Kaplan, Pulaski & Zuber, P.C.
Board Certified – Civil Appellate Law
11 Greenway Plaza, Suite 1400
Houston, TX 77046
713-961-9045
tgarrison@wkpz.com

BOOK REVIEW

by Kirby Drake

QUIET by SUSAN CAIN



I am an avid reader and I tend to enjoy books that discuss personality traits, workplace culture, and how people relate to one another; however, no other book to-date has had more impact when it comes to these topics than *Quiet* by Susan Cain.

As background, no matter which personality test I take, I always register as an extreme introvert, and the label “introvert” has traditionally carried with it a somewhat negative connotation. I have heard comments such as “you don’t want to be around people” or “you’re boring and just would rather stay at home than do anything fun.” These are not true statements about me, but yet, they are hard to avoid as an introvert. Enter *Quiet*.

This book emphasizes that society sometimes devalues introverts in favor of the “extrovert ideal,” but we have the power to change that. Susan Cain has a style of writing that demonstrates the intense research that she has done on the topic of introversion but also reveals her personal challenges that she has faced being an introvert, especially in the early part of her career when she was a Wall Street attorney. I could really connect with her being an attorney as well as being an introvert and how she has moved past any of the “introvert challenges.” This book also is encouraging in that she introduces successful introverts throughout the book, including Rosa Parks, Chopin, Dr. Seuss, and Steve Wozniak (of Apple fame). I was able to look at these examples and appreciate what people have achieved as introverts, particularly when they don’t have the extrovert characteristics that society seems to believe may lead to success, such as enjoying collaborative work and being comfortable with self-promotion.

There is a lot of good information in this book that can be helpful to introverts and extroverts alike when it comes to the workplace. One myth that people sometimes have when it comes to introverts is that they hate public speaking. But as Susan Cain has said “[t]hanks to the miracle of desensitization (exposing yourself in small doses to the thing you fear) and to the great joy of speaking on a subject I’m passionate about, ironically I now have a career as... a public speaker.” I can relate to this because, over time, I now generally feel very comfortable doing public speaking, particularly on a topic about which I am passionate.

Susan Cain also gives several pieces of advice to introverts and then to extroverts. With introverts in the workplace, she recommends that they need to have patience with an extrovert’s need to talk his/her ideas out loud and, at the same time, pay attention to what they can learn from the extrovert. Another recommendation for introverts is to show outward enthusiasm for good work done by an extrovert; if the approval is only processed internally, then an extrovert may think the introvert disapproves. As for extroverts in the workplace, she recommends that they circulate presentations or materials to be discussed in advance of a meeting to give introverts time to process and be prepared to discuss. Similarly, she recommends following up with introverts after a meeting, because they often have their best ideas once they have had time to process them.

Ultimately, given the impact that this book has had on me (as well as introverts and extroverts with whom I shared this book), I recommend this book to both introverts and extroverts because both groups can learn a lot from Susan Cain’s stories and the lessons that can be gleaned from the book. If anyone does read the book, please reach out to me because I am always looking for people with which I can discuss the points made in the book and how we can apply them to our daily lives.

IN THE KNOW...

❖ Would you like to recommend membership to a colleague? Full Membership is \$25 for one year (if you have been licensed less than two years, your first two years are free) and a Student Membership is \$5. Membership year is June 1st to May 31st. You can download an application from our website at:

<http://www.txwomenlawsection.com/Portals/0/WomenAndLawBrochure%204-20-2015.pdf>

Are you a WAL Section member and have something you would like to share with the rest of the 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:

Angie Webster, Newsletter Editor

awebster@hicks-thomas.com

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