

THE WOMEN'S ADVOCATE

A CATALYST FOR 2014 – 2015



Women and the Law Section Newsletter
www.txwomenlawsection.org

WINTER

Vol. 36, No. 2

CLICK ON TITLE TO
JUMP TO ARTICLE

IN THIS ISSUE

LESSONS FROM THANKSGIVING: SPREADING THE HOLIDAY SPIRIT THROUGH ACTS OF KINDNESS	2
TEXAS TRIAL LAWYERS ASSOCIATION HAPPY HOUR.....	3
IN THE KNOW.....	3
<i>B.C. v. STEAK 'N SHAKE OPERATIONS, INC.: A CASE IMPACTING WOMEN IN TEXAS.....</i>	4-5
THE TEXAS WOMEN LAWYERS 2016 EMBRACE HIRE POWER CLE.....	5
Free WAL Teleconference CLE.....	5
Book Review <i>Big Magic by Elizabeth Gilbert.....</i>	6

CHAIR'S CORNER



As I start my year as Chair of the Section, I am overwhelmed by the honor of working with such a talented group of women. This year's Council includes attorneys from all corners of the State, with diverse practices and backgrounds, but who have at least this one thing in common—their commitment to service. Our Section is charged with the mission of encouraging and facilitating the active and effective participation of women in the legal profession and in the community, and addressing women's needs and the issues affecting them. It is no small task—with over 33,000 female members of the State Bar — the issues affecting them are surely as varied as can be.

This year, the Council plans to focus its efforts on serving the Section and as a resource to aid members in their practice. With that goal in mind, we have begun a thorough (and much-needed) overhaul of the Section's website. Once complete, it will provide information about benefits offered by the State Bar, upcoming CLE events and networking opportunities, as well as practical advice and useful links to other websites that other Texas attorneys have found valuable. The website will also feature the articles prepared for the Section newsletters. The Council hopes members will find the website can be a pragmatic tool, and we invite suggestions from members on how we can continue to improve it.

The Council also looks forward to offering our membership additional benefits in the form of CLE and networking happy hours. We kicked off the bar year with a well-attended happy hour on September 18, 2015, cohosted by the Houston Trial Lawyers Association. Our next complimentary happy hour is scheduled to take place in Austin on January 29, 2016, and all of our members are welcome. Mark your calendars for our upcoming Dallas happy hour on April 8, 2016. With regard to CLE provided by the Section, we hope to expand on the number and variety of programs offered. In addition to organizing the Section-sponsored CLE at the Annual Meeting as we have in past years, we are developing a Webinar that we expect to be available in January 2016.

Finally, the Council will lead the Section in a fundraising endeavor benefiting the Tahirih Justice Center in 2016. Tahirih provides legal and social services to women and children fleeing human rights violations, including sex trafficking and forced slavery. We believe this organization embodies the Section's mission, and we look forward to contributing to Tahirih's efforts in addressing women's needs. Additional information about this project will be made available in future newsletters and on the Section's website. We hope our members will be inspired to contribute to the cause or find another way to better the lives of women through monetary gifts and/or community service.

The Council and I look forward to serving you this year. Please reach out to us if you have suggestions or would like to get involved in our efforts to serve the needs of women in Texas.

2014 - 2015

WAL OFFICERS AND COUNCIL

CHAIR

Chelsie King Garza
CHELSIE KING GARZA, P.C.
800 Sawyer Street
Houston 77007
(713) 893-8808

CHAIR-ELECT

Annie McAdams
STEELMAN & 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

Paul Whitten-Doolin
SCHILMBERGER
5599 San Felipe, 16th Floor
Houston 77006
(713) 898-8184

CHRONOLOGIST

Deborah Cordova
KITTELMAN 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

JoAl Cannon-Sheridan, Austin
Nicondra "Nikki" Chargois-Allen, Edinburg
Annie McAdams, Houston
Briana Paramore, Lubbock
Elizabeth von Kreisler, Austin

COUNCIL TERMS EXPIRING 2017

Kirby Drake, Dallas
Angela Hough, Dallas
Meagan Hassan, Houston
Gabrielle Taglienti, San Antonio

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

LESSONS FROM THANKSGIVING: SPREADING THE HOLIDAY SPIRIT THROUGH ACTS OF KINDNESS

BY CAROLYN F. MOORE

This last Thanksgiving five people performed good deeds that demonstrate the adage that the best things in life are free. Terry, my husband, and I were fortunate enough to see all five feats.

Early in the morning, my great nephews, Maxwell and Henry, who will soon be 4 and 2 respectively, visited our home. Their parents drove with them from Dallas to see several sets of relatives in Lubbock. After the 6 of us finished our tradition of eating blueberry muffins that I bake (with help from a package or box), Maxwell walked up close to me, saying that he wanted to help me do something to get ready for the day. When I leaned down toward him to thank him and to think of something for him to do, he gave me a kiss on the cheek. I was so very happy to receive this unexpected gift. I told him that his job was to continue helping take care of his little brother, reminding him that he needed to set a good example for Henry.

Just minutes later, we all went outside to play in the leaves. Henry picked through the leaves and chose a red one to give to me while Maxwell picked out red berries for my husband. I can still see Henry's eyes sparkle and his cheeks turn a rose color as he handed me that leaf. Terry, much kinder than I, put all the berries in his pocket to dispose of later. I just tossed my leaf back in the yard when the boys returned inside the house. I wish now that I had saved my gift.

Before lunch at our home, Terry's daughter-in-law rushed into the house, asking me for a paper plate and plastic utensils. She said that she wanted to take food to a homeless man who was selling newspapers at a nearby corner. She stated that he had all his possessions in a shopping cart that was positioned close to him on the wet, cold ground. Within minutes of finding a paper plate, she prepared and delivered the meal, a traditional Thanksgiving fare, to the man. When she returned to our house, she said that the man smiled when she presented him with the food. She said she would not have enjoyed her own meal had she not fed the man.

Terry's daughter brought her family and a friend to share Thanksgiving with us. His daughter did not want the friend to be alone on Thanksgiving. We were happy to be "family" for that friend and for several other friends who had accepted our invitation for lunch.

After lunch, Terry and I lingered at the table with Samantha, his 11-year-old granddaughter. She told us that she is very interested in singing and that one of her teachers singled her out during choir practice as being able to sing in key. Then, with prompting from me and with a short accompaniment by Terry, she sang *Silent Night* for us in a voice so soft that only Terry and I could hear. Her teacher was indeed correct; the child has a beautiful voice. More than that, Samantha demonstrated with her lovely voice the true meaning of the song. In my mind, I can still hear her singing

Each of these guests acted selflessly and put someone else's needs ahead of their own. The toddlers, the soon-to-be teenager, and the adult women reminded me what Thanksgiving and the rest of the holiday season is truly about – enjoying time spent with family and friends, and spreading joy through kindness toward others.

Between now and the new year, I hope to perform acts of kindness for people in my life, but I know I won't be able to match the impact my five guests made this Thanksgiving.



FRIDAY, JANUARY 29, 2016

Joint Happy Hour with
**TRIAL LAWYERS
ASSOCIATION**

5:30 P.M.

1220 Colorado

Austin, TX 78701

Rooftop Deck

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 Just 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

Re: IN THE KNOW

B.C. v. STEAK ‘N SHAKE OPERATIONS, INC.: *A CASE IMPACTING WOMEN IN TEXAS*

By Chelsie Garza

The Texas Supreme Court has recently requested briefing on a case with great impact to women in this State. The Decision in the *B.C. v. Steak ‘N Shake Operations, Inc.* 461 S.W. 3d 928 (Tex. App. – Dallas 2015), pet. filed matter will control how cases involving rape and sexual assault in the workplace are handled in Texas civil courts. The issue is whether female victims of workplace sexual assault are limited to administrative remedies under the Texas Commission on Human Rights Act (TCHRA), and whether these cases should be treated just like any other workplace harassment.

The Supreme Court’s decision in *Steak ‘N Shake* will have a greater effect on women because they are more often victims of sexual assault than their male counterparts. 91% of the victims of rape and sexual assault are female, and only 9% are male. 8% of rapes occur while the victim is at work. In *Steak ‘N Shake*, B.C. was the victim of a violent sexual assault inflicted by her boss, a manager of Steak ‘N Shake. The manager sexually assaulted B.C. in the workplace restroom. B.C. brought a civil action against her employer for the violent sexual act of her boss, alleging sexual assault and intentional infliction of emotion distress. The trial court granted summary judgment on the ground that B.C. had not exhausted her administrative remedy by filing a complaint with the TCHRA. The Dallas Court of Appeals affirmed.

In deciding that B.C.’s claims were precluded by TCHRA, the Dallas Court of Appeals noted:

Where the gravamen of a plaintiff’s case is TCHRA-covered harassment, the Act forecloses common-law theories predicated on the same underlying sexual-harassment facts...Because the gravamen of B.C.’s complaint against Steak ‘N Shake is sexual harassment/sexual assault committed by her supervisor, a wrong TCHRA was specifically designed to remedy, her common law assault claim is precluded by the Act.

Steak ‘N Shake Ops., 461 S.W. 3d at 930 (quoting *Waffle House, Inc. v. Williams*, 313 S.W. 3d 796, 813 (Tex. 2010)). The Dallas Court made no distinction between sexual harassment, which may involve no touching at all, and the violent sexual assault that Steak ‘N Shake’s manager inflicted upon B.C. Clearly, any women who has experience either can attest that these are very different offenses.

The TCHRA was designed to preserve the public safety and general welfare, and to promote the interests, rights and privileges of individuals within the state. It was not enacted to limit or impede common law claims. The Dallas court’s opinion fails to serve the TCHRA’s purpose by declining to distinguish between violent sexual assault, possibly causing serious physical injury, and sex-based discrimination or sexual harassment, which may involve only unwanted flirtation or advances.

The Dallas Court's decision is in direct conflict with *Perez v. Living Centers-Devcon*, 963 S.W. 2d 870 (Tex. App. - San Antonio 1998, pet. denied). In that case, the San Antonio court held that the TCHRA is not the exclusive remedy for employment claims and does not preempt an employee's common law claims for sexual assault and battery or intentional infliction of emotional distress. The TCHRA was designed for the protection of employees, particularly those more often the victims of discrimination and harassment, including women. Steak 'N Shake has used the TCHRA to shield itself from claims made by victims of workplace sexual assault. The Supreme Court's decision in this case will impact a woman's ability to seek redress in court for workplace sexual violence.

Please share your comments on *Steak 'N Shake* with us by emailing the newsletter editor at awebster@hicks-thomas.com

Want to learn more? Join us for a
FREE Teleconference CLE for Women and the Law Section Members
B.C. v. Steak N' Shake Operations Inc.
The Legal Implications of this Landmark Decision and Will Women's Rights in the
Workplace be Limited?
Presented by
Matthew J. Kita, Attorney and Counselor at Law
January 28, 2016 ~ 10 a.m. - 11 a.m.
1 hour MCLE Credit
[RSVP](#) to attend this telephone CLE

Sponsored by
the Women and the Law Section of the State Bar of Texas

The Texas Women Lawyers 2016 Embrace Hire Power CLE

Friday, February 19, 2016

9 a.m. to 6 p.m.

St. Mary's School of Law

One Camino Santa Maria, San Antonio, TX 78228

[Register Here](#)

Join us for a fantastic networking opportunity, while at the same time gaining some valuable CLE credit. This one day CLE will cover the power of mentoring, cybersecurity, and financial advice for female lawyers.

Some of the featured presenters include:

- ❖ Nicole Sheindlin – Daughter of Judge Judy
- ❖ Kathryn Childers – U.S. Secret Service Agent
 - ❖ Justice Debra Lehrmann
 - ❖ Judge Susan Criss

We hope you'll join us!

BOOK REVIEW

by Paula Whitten-Doolin



I'll first note that I fully intended this review to be of Brene Brown's recent (although not *most* recent) book, *Daring Greatly*. Ms. Brown is a highly recommended Houston-based author and professor at the University of Houston; she has a much-watched TED talk on the same topic; and I love her occasional column in 'O' Magazine. However, I got about a third of the way through that book and Just. Couldn't. Finish. It. Many of you may enjoy it, but her writing style just stymied me; I felt like I was reading multiple pages of inspirational poster quotes, over and over. It is very rare for me not to finish a book, but there I was. So. I decided to read (and review) a book in a similar genre, from another author I have enjoyed in a different forum—Elizabeth Gilbert.

Many of you may recognize Ms. Gilbert's name from a little book called *Eat, Pray, Love* (or the Julia Roberts movie of the same name) about her decision to spend a year traveling, finding herself, and recovering after a difficult divorce and rebound relationship. Or from *Committed*, her subsequent book about her rushed decision to marry a man she met during that year of travel. *Big Magic* is not an autobiographical tale like the aforementioned two; it is instead an inspirational book about how she has found creative joy in her own life (and how others have, similarly, been inspired) and how we can try to achieve the same goal.

I chose this book because (separate and apart from my failure with Ms. Brown) I had found the most fulfillment in my recent, non-work, life from taking time (years, now) to learn about art and sculpture at the Glassell School of the Museum of Fine Arts, Houston. I say "had" because after my son was born (in May) I struggled with finding joy in what I used to love—I found that instead of solace and creative fulfillment, my work and my art were leaving me feeling even more burdened. Not enough hours in the day; too much stress; no 'flow'. I hoped Ms. Gilbert could provide me with some insight in how to fix that problem. Spoiler: she did ☺

The mantra which most describes the point of *Big Magic* is right upfront: Ms. Gilbert paraphrases a semi-famous poet who happens to share her name (Jack Gilbert) in asking: "Do you have the courage to bring forth the treasures that are hidden within you?" She illustrates this question with a story, of a friend who, at forty, realized it had been decades since she'd felt truly joyful and (with a shock) that the last time she'd felt so had been as a teenager, competing at ice-skating. This friend then did what many of us would be afraid to do: she jumped back into that world, as a middle-aged woman, being coached alongside teeny tweeners at a truly awful hour in the early morning. Three days a week. And found her joy again. No medals, no glory, no quitting her job—just having the guts to make time (and ignore the embarrassment of competing next to sprites on the ice) because that is what makes her happy. This is what Ms. Gilbert calls "creative living," and the journey to which "Big Magic."

Ms. Gilbert is not suggesting that we all don skates and illusion netting at 4:30 in the morning. Further along in the book, she explains that most of what she is describing is a way of letting go of your fears in order to try (NOT achieve) your personal creative dreams. A way of asking yourself if your decisions are being made out of fear (that you're not talented; that you're too fat, that you're too old; that people will think your work is terrible, etc...) and if so, how to acknowledge that and move on despite it. It sounds remarkably simple, but as with other such things, is not. Ms. Gilbert's point: it's not *easy* to move on despite fear, but most of the time it is entirely within your *own* power.

Much of the rest of the book is filled with what we (or at least me) love about Ms. Gilbert's writing: personal or semi-personal anecdotes written with a friend-next-door-for-twenty-years familiarity, illustrating the points above and how to achieve them. It is a short book and a fast read, and provides an objective viewpoint (a "step back") to see why you are hitting stumbling blocks in your path to creative joy and how to surmount them. Some of it is a little out there—she believes ideas are actually manifest and 'visit' those who are open to them, for example—but I still found the overall message encouraging and worth the time. For me, the book made me realize that my main problem was not fear of putting my creativity out there (I've had to get over that long since, through many, many, class-wide critiques of my work) but fear that if I let go of certain other responsibilities that do not give me joy, I would be judged adversely. So I said goodbye to a few things which were not working for me, and immediately felt more joyful. Also: no one really cared, and those who did, understood. Thank you, Elizabeth Gilbert!

Overall, it's a great book to read coming into the New Year and a light one. I recommend it.