

WALS

Lawyers Now



Chair's Message | *Teresa Schiller*

Dear Women and the Law Section Members:

We dedicate this issue to the memory of U.S. Supreme Court Justice Ruth Bader Ginsburg. A Lady Justice, she carried a sword in one hand and the scales of justice in the other. Like her, you are leaders and officers of the law. Here are articles designed to inspire, educate, honor, hear from, and support you.

Power Lunch Business Development Workshops (beg. Nov. 11)

Skills Savvy The Art of Appellate Oral Advocacy

Legal Mojo Investigating an Employment Complaint

Wellness 5 Tips for Total Wellness in a Tough Stretch

Confab Justice Ruth Bader Ginsburg's Legacy

Techno Texas Legal News Emails

Members Welcome, Benefits, and Progress

Gifts Giving the Gift of Membership

Squad Section Leaders

Sincerely,
Teresa Schiller, Chair
State Bar of Texas Women and the Law Section



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Skills Savvy | *Making the Most of Your Twenty Minutes* ***(The Art of Appellate Oral Advocacy)***

Deborah Race*

Twenty minutes – that is the time most appellate advocates have to present their case should they be granted oral argument. That often does not seem like enough time to present a case that you and/or the trial attorney, as well as the client, have lived with for years, but it is what you will get. So how do you make the best use of your twenty minutes?

1. Think of oral argument as a conversation.

The best advice I ever received was from Justice Paul Colley, for whom I clerked. Early on he advised me to consider oral argument nothing more than a conversation – one in which you are advocating for your position while remaining honest with the court.

2. Do not write out a prepared speech.

Don't write out what you intend to say. Instead, have bullet points of the topics you want to cover and then cover them.

3. Don't be married to any order – go with the flow.

Let the judges guide where you go in the argument by their questions. Never tell the court you will get to an answer later in the argument. If a judge asks a question, answer it immediately.

4. If a judge interrupts to speak, stop talking and listen.

If a judge has a question and interrupts you, stop talking and listen to the question – then answer it to the best of your ability.

5. If a judge wants to argue or belabor a point, answer, but try to move on.

Sometimes a judge will really take a strong position and want to argue the point. Never cut off that discussion, but if there is a tactful way to just agree to disagree and move on, try to do that. If you cannot, it is likely the other judges may give you some way to move on and return to the rest of the argument.

6. Know the record and the key cases.

Be ready for any questions – you must know your record, as well as any key cases and be prepared to fully discuss them with the court. A hot court with lots of questions is far better than a cold court with none.

7. If you don't know an answer, admit it.

Despite your best efforts, there may be questions you simply cannot answer. If that happens, admit it, but offer to provide the court with an answer after argument.

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Cont'd | ***Making the Most of Your Twenty Minutes***

8. Never jeopardize your integrity with the court.

While you should certainly advocate for your client, never obscure or blur the record or the law. You have to be honest with the court at all times. If there is a fact or case against you, don't try to hide it. Instead, explain why it should not carry the day.

9. Do not disparage opposing counsel.

Don't spend your time talking about how wrong, bad, evil, dishonest, terrible, etc., your opposing counsel is or has been. Instead, be gracious and courteous even if opposing counsel does not respond in kind. Appellate courts are traditionally extremely respectful and do not appreciate personal attacks or snide comments.

10. Try to respond to opposing counsel's arguments.

Listen to your opposing counsel carefully and if there are arguments or representations about which you want to respond, do so during your argument time. Explain to the court how you might distinguish a certain case counsel relied upon or how the record might reflect another angle to certain representations made.

11. Do not divide your time.

If at all possible, do not split your time with other counsel. Twenty minutes is not much time and dividing it can be disruptive to the flow of the argument and confusing. It may at times be unavoidable, but if you can, avoid it.

12. Ask the court if it will allow trial counsel to answer a question about the trial if you cannot.

If a question comes up during the argument regarding something that may not appear clear from the record and you don't know, ask the court if you can ask trial or other counsel with you to answer that question if possible.

13. If you want to use demonstratives, try to file beforehand and bring copies.

Many courts of appeals I have been in are not set up for AV aids – call first to ask. If you have something demonstrative that you want to use, file a notice of its use before the argument and then bring copies with you to distribute to the justices and opposing counsel.

14. Unless the court permits, wind it up when the red light comes on.

Even if you are not done, if the red light comes on, acknowledge it and end the argument. You might say something like "I see the red light is on, so unless the court has any additional questions, for all of these reasons, as well as those in our brief, I ask the court to affirm (or reverse, etc.) the decision of the trial court."

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Cont'd | ***Making the Most of Your Twenty Minutes***

15. If you cite to a new case during argument, provide a cite letter.

Sometimes in preparation for argument you discover a new case, or maybe a case you just didn't find in preparing the brief. If you are going to refer to it during argument, provide the court with a cite letter either before or after the argument. And a cite letter is just that – a letter stating that you plan to or did refer to this case during argument. Do not add additional argument.

Hopefully, these tips will make your argument preparation easier and your argument more effective and enjoyable.

**Deborah Race is an appellate attorney in Tyler, Texas. She is board-certified in civil appellate law. Deborah can be reached at drace@raceappeallaw.com.*

Legal Mojo | ***Investigating an Employment Complaint***

Teresa Schiller***

What if an employee of a business makes a complaint (internally or publicly) about workplace misconduct? What should the business do?

It depends on many things, but one important decision is whether or not the business needs to investigate the complaint at all. For example, would a lower-level review of the complaint be sufficient? How serious is the complaint? Does it allege a violation of company policy? Does a company policy specify particular steps for addressing it?

Suppose an investigation is needed. A *successful* investigation clarifies the objective facts, and then resolves the complaint and improves the workplace so that everyone can get back to business. Here are some possible steps to take in investigating an employment complaint.

1. **Decide preliminary issues.**

First, decide preliminary issues. For example, what should be the goal(s) of the investigation? Some possible goals are to (a) figure out whether misconduct has occurred, (b) stop the misconduct and determine how to prevent it in the future, and (c) lay the groundwork for taking appropriate action.

What status should an accused employee have during the investigation? The goal is to balance the need to prevent further damage to the complainant and the business with the need to minimize adverse action against an employee who later could be exonerated. Some possibilities are to (a) give the employee paid time off until the end of the investigation, (b) transfer the employee, (c) suspend the employee, and (d) leave the employee's status unchanged. Depending on the type and seriousness of the allegations, the complainant may need to have the accused employee moved to a different area of responsibility, or moved out of the chain of command.

And one cardinal rule – no retaliation against the complainant, even if the complaint is later deemed unfounded.

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2. Select an investigator, and make a plan.

Second, select an investigator, and make a plan. Possible investigators include lawyers, human resource employees, and high-level managers. Optimally, an investigator lends credibility to the investigation, communicates diplomatically, and is discreet. The investigator should be ready for the unexpected, particularly when interviewing witnesses. It also is helpful for an investigator to be knowledgeable about employment laws. A benefit to having a lawyer conduct an investigation is that the business may be able to protect some communications from disclosure based on attorney-client privilege rules, if done properly.

Business leaders and the investigator should make a plan. The plan should (a) identify witnesses and include an interview schedule, (b) include a list of common questions to ask all witnesses, (c) identify documents that need to be located and secured quickly, (d) establish a process to unearth facts that are material, and (e) proceed to reach a fair and reasonable conclusion.

3. Investigate, and make a report.

Third, investigate, and make a report. Conducting the investigation may involve interviewing witnesses, reviewing documents, and searching employees' work areas and computers, if necessary. An investigation should be conducted legally and discreetly so as to minimize the risk of potential claims of defamation, retaliation, invasion of privacy, and malicious prosecution. During the investigation, witnesses and others should be given assurances that there will be no retaliation permitted with respect to the complaint.

The investigator should prepare a private report – written or oral – that focuses on meeting the goal(s) of the investigation identified at the outset. The report may contain purely factual findings, or it can include recommendations for certain actions to be taken as well.

4. Act on the results.

Fourth, act on the results. Once the report has been delivered, some hard decisions may be required. The business should act on the report – in a fair and reasonable way – to deal with the root cause of the complaint, including taking appropriate disciplinary actions. For example, the business may take action against an accused employee, or clear the employee of wrongdoing. It also may implement stronger workplace controls or rewrite policies. Taking these steps requires balancing important considerations, and avoiding the creation of potential claims by one or more affected parties. Fairness in both approach and consequence will go a long way toward protecting the business and the employment setting.

In conclusion, with these steps in mind, the businesses you help to protect may be better prepared to make investigatory decisions in the event of an employment complaint.

**Teresa Schiller is a business and employment lawyer at Beard Kultgen in Waco. She can be reached at schiller@thetexasfirm.com.*

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Wellness | *Prosper in the Pandemic: 5 Tips for Total Wellness in the Midst of a Tough Stretch*

Karla J. Aghedo*

Eight months into the global pandemic caused by COVID-19, our world remains significantly altered. We're spending more time at home. We're digesting the news reports about widespread racial unrest. Our kids are struggling through virtual schooling. Many face the economic strain of job transitions, furloughs, and clients with tighter purse strings. All of this swirls into a dangerous cocktail that threatens to undermine our physical, mental, emotional, relational, and spiritual health.

And yet, there are opportunities for us to prosper in wellness, even in this season. This article is designed to empower you with five tips for reclaiming wellness in the midst of the multiple crises facing our world right now. Try one, or all five, and reclaim your power to thrive.

1. Keep yourself on your list of causes.

As you zealously represent your clients, consider how important it is for you to be well while striving to help others. There are many "fronts" right now that are unique to 2020, on top of the standard responsibilities we have as lawyers to serve our clients. We battle on the front lines for many reasons, championing change in various causes. Question: Are you on the list of causes you champion? Make sure you are on the list – and consider moving yourself to the top of that list. No one is well-served by your burnout, resentment, or failed juggling act. When you make your well-being a top priority, everyone around you benefits.

2. Embrace gratitude.

Embracing a gratitude practice could be the key to thriving amidst the latest challenges brought on by the pandemic and the emotional shift that many experience heading into the fall season every year. A healthy gratitude practice calls on us to actively seek out reasons to be thankful, even when everything seems like it is going wrong. Gratitude journals are popular and easy enough to start in any cute spiral notebook or journal. If daily journaling scares you, try this: grab a sticky note or index card, and write down "three things I'm thankful for now." Whatever comes to mind goes on the little note. Post that note some place where you can see it throughout the day, and watch how the simple practice of gratitude shifts your whole mood.

3. Move through Zoom.

Most of us are spending more time than ever hunched in front of our computer on Zoom calls. We as lawyers have been bound to our computers since years before the pandemic, churning out hours of work product. Add in catching up with family and friends, and most of us have spent even more work and leisure time in virtual communication lately. Sometimes, we have to wear a suit jacket and be attentive throughout. But many times, we have our video off and our audio on mute the entire time. That's prime time to move, reducing your stress, improving your mood, and raising your heart rate.

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Try one of these quick exercises during your next Zoom call:

- Walk around the room. A normal or moderate pace should add 1000+ steps every 10 minutes.
- Do 10 squats. Mimic the motion of sitting down in a chair – without dipping your hips below your knees or your knees over your toes when you come down.
- Push for 20 high knees. Stand with your feet shoulder-width apart. Raise one knee to your chest, lower it with control, and do the same with the other knee.

4. Nature is your friend.

While everyone is following the recommendations of social distancing and avoiding large gatherings in enclosed spaces, nature is a welcome and faithful friend. A dose of fresh air has both physical and mental health benefits, while being one of the safest ways to get a much-needed change of scenery after hours in the house or office. Plan a trip to the park. Take a walk on a nature trail. Dig that bike out of your attic. With cooler days coming to Texas, it might be time to move the laptop outdoors on the deck for an hour of each work day. Your body, mind, and outlook will thank you.

5. Beat the Back-to-School Blues.

For those of us with kids who are going back to school in person, taking virtual classes, trying homeschool, or who are simply unable to participate in their typical childcare arrangements, all early signs point in one general direction: total exercise in frustration. It's mentally and emotionally taxing – for everyone. Here are three reminders to support your mental health as we head “back to school.”

a. Be patient with yourself.

You deserve some extra self-compassion during this time as you play the role of unpaid teaching assistant, lunch lady, and head nurse – in addition to your income-generating responsibilities and romantic partnership commitments. Be okay with less-than-perfection right now. Be okay with asking for help – at work and at home. Be okay with accomplishing three important things today and not seventeen.

b. Be patient with your student.

Your student could use some extra patience and forgiveness, too. She has to juggle learning in a new environment -- likely with a new teacher, new classmates, and new expectations – without the fun of being around friends. If the schoolwork isn't perfect in these next few weeks, have a little mercy. Your scholar will fly soon enough. For now, use even more verbal encouragement, and consider adding extra recess time outside, just to let everyone catch their breath.

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c. Be patient with your teacher(s).

They too are operating in a new, uncertain, ever-changing environment. And many of them are juggling the parenting and life partner roles, just like you are – only with a virtual classroom of kids with different needs and attention spans at the same time. Consider sending an encouraging email or text here and there.

Decide that it is possible for you to prosper in mental, physical, and spiritual health during this time. Then take small steps to make that your reality.

Karla J. Aghedo is the founder and CEO of Houston Wellness Workshops for Women (H3W) (h3whouston@gmail.com) where she curates wellness experiences and provides wellness coaching for professional women who want to reclaim their power through wellness. As Managing Attorney for The Aghedo Firm PLLC (aghedolaw@gmail.com), Karla specializes in white collar criminal defense in federal and state courts. She lives with her husband and two boys in Houston.

Confab | *Justice Ruth Bader Ginsburg's Legacy*

What have you accomplished that you think would make Justice Ginsburg proud?

Email us at sbotwomenandthelaw@gmail.com.

We'd love to hear from you!

(Check out this bio of Justice Ginsburg:
https://en.wikipedia.org/wiki/Ruth_Bader_Ginsburg.)

Techno | *Texas Legal News Emails*

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Power Lunch | *Business Development Workshops*

Laura Kugler
Hawkins, Parnell & Young, LLP in Dallas

Lindsay Owens
Lynch Chappell & Alsup in Midland

Cynthia Barela Graham
Law Office of Cynthia Barela Graham

Teresa Schiller
Beard Kultgen in Waco

Free! Virtual! Members only.
Registration: Tracy Sheehan at tsheehan@hpylaw.com.

These videoconferences will cover similar material.
Members may want to register for workshops
targeted to their geographical areas, but
they may register for any of the workshops.
No CLE credit available.

Don't miss a Power Lunch! Supplemental program to be offered in
June 2021 at State Bar of Texas Annual Meeting.

November 11, 2020
12:00-1:00

Dallas/Fort Worth and
North Texas

December 8, 2020
12:00-1:00

Brownsville, El Paso, Laredo,
McAllen, and South Texas

January 13, 2021
12:00-1:00

Houston Area

February 10, 2021
12:00-1:00

Agricultural -- Abilene, Amarillo,
Lubbock, San Angelo, and
Wichita Falls

March 18, 2021
12:00-1:00

San Antonio and
South Central Texas

April 14, 2021
12:00-1:00

Oil/Gas -- Midland, Odessa,
Tyler, and East Texas

May 12, 2021
12:00-1:00

Austin, Waco, and
Central Texas

Members | *Welcome, Benefits, and Progress*

Hello! Welcome to all of our new members joining since the start of the 2020-2021 Bar year!

We hope that you enjoy the benefits of your membership, including outstanding monthly virtual CLEs, newsletters, and business development workshops. We also are upgrading our website to be more beneficial to members.

We started the year with 1,180 members. Our goal is to get a minimum of 300 new members this year, and to date we have made about 25% progress in meeting this goal.

Please join us in this goal by promoting the Women and the Law Section and giving the gift of membership, if possible.

Thank you and we look forward to interacting with you throughout the year!

Denise Alex and Dori Goldman
Membership Committee Co-Chairs

Gifts | *Giving the Gift of Membership*

Thank you to our members who recently gave the gift of section membership to honor Texas women lawyers!

<i>Grantor</i>	<i>Beneficiary</i>
Ellis Iverson	Sharla Frost
Susan Kelly	Kristen Parker
Jessica Mendez	Connie Flores Maria Grasheim
Teresa Schiller	Jeanine Rispoli

Our section is stronger with you and your colleagues as members!
Let's lift each other as we climb!

- If you'd like to give the gift of section membership,
(1) talk with the person you'd like to benefit,
(2) download the application at www.texasbar.com/sections/
(3) fill it out and email it to memmail@texasbar.com, and
(4) if you are open to being recognized in this column,
please email us at sbotwomenandthelaw@gmail.com.

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