



Triple Investiture an Historic Moment for Denton

By Darcy Loveless, Loveless & Lovesless, www.cmloveless.com.

The heat was withering, but that did not stop the members of the DCBA and other friends, family, and supporters from near and far from convening at the Courthouse on the Square on August 1, 2010 for a historic moment—the triple investiture ceremony where Judge Lee Gabriel, Judge Margaret Barnes, and Robert Ramirez took their respective oaths of office.

The events leading into the triple investiture have never occurred simultaneously before in our county. It started when Justice Cayce decided to step down from the Second Court of Appeals in Ft. Worth. Frequently, judges leave office and the governor appoints a replacement. However, in this case, the timing of the retirement mandated that the replacement be filled at the local level. Justice Terrie Livingston, already a Justice on the Second court of Appeals, was chosen to fill the vacancy as Chief Justice, which then left her spot open for the remainder of her six-year term that expires in 2014. The Republican Party chairs from the

twelve counties served by the court gathered to select a candidate who would be placed on the November general election ballot as the candidate for the remainder of the term. After that selection was made, the Governor appointed Judge Gabriel to serve until December 31, 2010. Democratic Party chairs also had opportunity to select a candidate for the seat. Voters will determine who will serve the remainder of the unexpired term in the November election.

In that process, Judge Lee Gabriel, the only Judge to sit in the 367th District Court, was chosen to take that place. Judge Gabriel was running for re-election in Denton County, so that left her place on the ballot open, and the precinct chairs of Denton County's Republican Party met to determine who would fill that ballot spot. Judge Margaret Barnes, former judge of County Court at Law #2, was chosen.

The domino effect continued, as this choice left that court without a judge. The precinct chairs met again, and chose Robert Ramirez to take that bench. The chair of Denton County's

Republican Party, Diane Edmonson, stressed at the investiture ceremony how unique it is for local, grass-roots politics to have such an effect all at one time.

All three judges agreed to attend the investiture ceremony, which allowed the maximum amount of attendees to attend and congratulate all of them. After the invocation, former Justice Cayce and local lawyer Sherri Shipman introduced Judge Gabriel, and Justice Terrie Livingston administered the oath of office. Ron Neiman introduced Judge Barnes, and Judge Gabriel administered the oath of office. Judge Mary Horn administered the oath of office to Robert Ramirez, making him the newest judge in the county until January 1, 2011, when the unprecedented change in Denton County's judiciary is expected to continue with the investiture of four additional new judges.

The Denton Women's Republican Club, headed by Lee Ann Breeding, sponsored a lovely reception following the investiture ceremonies for all attendees.

Judge Lee Gabriel



Judge Margaret Barnes



Judge Robert Ramirez



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From the President

Interesting times. Judge Gabriel is now at the Court of Appeals. Judge Barnes is the new Judge for the 367th Judicial District Court of Denton County. Judge Ramirez is the new Judge of the County Court at Law #2 in Denton County. January will bring us yet four more new Judges.

I commend these members of our Bar for their past service and for their future service to the legal community. I had wanted to be a Judge when I was in law school. But then when I joined Hayes, Coffey & Berry, P.C., Mr. Hayes and I had a Temporary Injunction Hearing in front of Judge White that lasted five days straight and we still didn't get finished. I felt bad for the Judge having to listen to all that evidence eight hours a day for five days in a row. I imagined the Judge chair as being a ball and chain.

On the other hand, I recently discussed this with a current member of our judiciary, and he stated that it was the most exciting job in the legal profession. He said it was an absolute joy to listen to good quality lawyers make their arguments.

It is amazing how age affects us. When I first started, I would never have understood how being a Judge could be exciting. However, now I can see that to watch and learn and see good quality lawyers representing their clients on complex litigation, year after year, would be a very rewarding experience.

I continue to thoroughly enjoy practicing in Denton County. Our Judges truly care about the community and thoughtfully consider each and every decision they make. Everyone should take some time to thank your Judges for their dedication and service to our society.



Don R. White, Jr., President



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- Trial Lawyer's Association
- Family Law Section
- Greater Denton County Young Lawyers Association
- Real Estate, Trust, and Probate Law Section
- Criminal Law

DCBA Membership

Your DCBA Membership includes

- Free and discounted CLE programs
- Monthly luncheon & happy hour
- Networking opportunities
- Listing on the bar website, including photo, two practice areas, and a link to your website.

For more information see our website: www.dentonbar.com.

Death by Meat

By Andrew M. Lloyd, Lloyd Law Firm PLLC, www.lloydfirm.com.

There is only so much meat and fun a human carnivore, even an attorney, can consume! But with its typical flare and style, the Denton County Bar Association overwhelmed (and overstuffed) its volunteers once again. Voted back by popular demand, DCAP hosted its annual Sign-up party for Mediation at the Frisco MasterGrill Churrascaria for the second year in a row—a little stretch out of the way for local lawyers but plenty of time for digestion on the way home.

There were approximately 50 attorneys who came prepared with calendars and appetites in order to fill the vacant spots. Each year, DCAP proudly enlists attorneys to mediate cases pro bono, in an effort to maintain one of the greatest alternative dispute resolution centers in the state. To qualify for the event, Denton and local lawyers sign up to serve as mediators for a minimum of four full-day mediations to take place over the next 12 months. It is the efforts these individuals undertake for FREE that makes DCAP such an awesome achievement.

And the freebies kept on coming. Every patron who signed up received a tote bag cooler with DCAP cups and straws to use at any of their future events. We can't forget the food, either—more appetizers than you could shake a stick at, all the drinks you could handle responsibly, and a salad bar packed with enough side dishes, pasta, rolls, fish, and veggies for your meal—FREE! Yet, the night remained unfinished until every juicy portion of chicken, lamb, pork, and beef was graciously served on endless

"...the efforts these individuals undertake ... make DCAP such an awesome achievement."

spits by the chefs.

David Bouschor warned us that the little flip cards were dangerous—green meant meat, and it kept coming all night! Eventually, all the cards were exhaustedly flipped to red, with a "STOP, please, no more meat, I give up, I'm dying." Then came the delicious dessert tray. (Inga and I got three, but who's counting?!) After all, it's FREE!

But wait, folks, that's not all. There were also dozens of door prizes handed out, donated by the gifts of your very own bar members. Almost everyone walked away with valuable gifts and cards valued at \$25 or more. Brian Tackett of Hayes, Berry, White, and Vanzant walked away with the grand prize—a \$500 Southwest Airlines certificate—and he's already promised me the trip... I think... although rumor has it everyone became real friendly with him after his winnings!

This FREE attitude is precisely the treasure that DCAP and the Denton County Bar promote. It is the gift of many attorneys' precious time that engenders the wonderful associations we have within our Bar. We therefore thank you, and salute you, for your time, effort, contributions, and countless sacrifices each of you make to create DCAP's success! We hope the hundreds of pounds of meat devoured serve you well for the hundreds of hours you will be collectively devoting to mediation this year.



Monthly Meetings

Collaborative Professionals

DCCP will meet at **12:00 PM** on Wednesday, **September 8** at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

Family Law

Family Law will meet at **12:00 PM** on Thursday, **September 16** at the Central Jury Room, 1450 E. McKinney St. in Denton.

GDCYLA

GDCYLA will meet at **11:45 AM** on Thursday, **September 2** at Sweetwater, 115 S. Elm St. in Denton.

GDCYLA will meet for happy hour at **5:00 PM** on Thursday, **September 9** at the Loophole, 119 W. Hickory St. in Denton.

Paralegals

DCPA will meet at **12:00 PM** on Tuesday, **September 21** at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

REPTL

REPTL will meet at **12:00 PM** on Wednesday, **September 15** at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

GDCYLA Wins Two Awards

By Andrew Passons, Lewis & Passons, P.C.,
www.dentonfamilyattorneys.com.

The State Bar of Texas hosted its 2010 Bar Leaders Conference in Houston in July. The Bar Leaders Conference is an annual gathering of State Bar of Texas and Texas Young Lawyers Association representatives as well as representatives of the local bar associations and young lawyers affiliates.

The Greater Denton County Young Lawyers Association (GDCYLA) received two awards in the Texas Young Lawyers Association Local Affiliates Award of Achievement Competition. The competition is broken down into two divisions for larger cities and smaller cities. In the small city division, GDCYLA received a second place award in the *Comprehensive* category for its service projects during the 2009-10 year. GDCYLA also received a second place award in the *Single Project/Service to the Bar* category.

Pictured below receiving the award on behalf of GDCYLA are Andrew Passons, the 2010-11 GDCYLA President, Mike Upshaw, the 2010-11 President-Elect, and J.P. LeCompte, the Immediate Past President. Presenting the award is Cori Harbour, Immediate Past President of the Texas Young Lawyers Association.

For questions about the GDCYLA, please contact Andrew Passons by email at andrew@dentonfamilyattorneys.com or contact Mike Upshaw at mikeupshaw@gmail.com.



Denton County Adoption Day

Date:

Friday, November 12
10:00 AM-12:00 PM



Location:

2nd Floor, Denton County Courts Building
1450 E. McKinney St, Denton, TX 76209

Details:

We are accepting donations and volunteers. If you are interested in participating, please contact Michelle Houston at 940-320-1500 or at mhouston@dentonbar.com. For more information, please visit us on facebook at www.facebook.com/dentoncountyadoptionday.

Smelling the Roses

By Justice Lee Gabriel, Second Court of Appeals of Texas.

When I sat down to write this, two distinct ideas entered my head almost immediately. First is that I haven't actually written anything of substance or that required original thinking in quite some time. Since my new job requires me to do just that, perhaps this is a good opportunity to test some forgotten skills. Second, and most prevailing, is the idea that there is no clear-cut ritual or ideal way to say goodbye to those you have valued in your life for over two decades. Even though my move is a happy one, saying goodbye is difficult.

There have been so many people who have contributed to my growth as a professional and a human being over the past twenty-eight years, I cannot begin to adequately express my appreciation. From Jerry Cobb, who gave me my first job, to Don White and all the members of the Denton County Bar Association who gave me a farewell celebration I won't forget, and everyone in between, I say thank you.

I was truly honored to have worked with many other Judges who I respect tremendously to this day. Over the years, they offered me advice,

support and an understanding only someone else who does the same job can. I am proud of what we achieved, from a new courthouse to new courts, over the years and will miss the camaraderie and particularly the laughter we shared.

Professionally, I have the benefit of having learned from some great lawyers. I believe Denton County has such an outstanding Bar Association because it has such outstanding attorneys. I have had the privilege to watch lawyers with truly exceptional skills and integrity beyond reproach. I have also had the opportunity to see these same people contribute to their community in so many different ways because they saw a need. I have learned the importance of pride in what you do and just as importantly in how you do it. I am proud to be from Denton County.

I have been blessed over these years by the many friendships I made that I know will last a lifetime. On my last day of work, I could not say goodbye to Melody, Lisa and Alton. I took the coward's way out and just left. I know they understood because they are my family. I have been so



privileged to have them as a daily part of my life and I will miss them greatly.

Success is a very subjective term. It can mean many different things to different people. Sometimes it is easier to identify what success is not. One thing I know for sure is true for me is that the measure of success is not the material possessions or wealth you accumulate, because you can have all that money can buy and still have nothing. A very wise law school professor told us on the last day of class that one can have everything that is customarily identified with success and yet it all means nothing if you don't stop and smell the roses.

I leave with a deep sense of gratitude for every experience I have had over the past twenty-eight years because I know that as a result I am a better person. We all have new challenges to face and I wish each of you happiness and success—but don't forget to stop and smell the roses.

Lee Gabriel

Denton County Trial Lawyers Section Annual Business Meeting

Date:

September 16, 2010
12:00-1:30 pm

Location:

Texas Land and
Cattle (Hickory Creek)

Registration:

Please contact Travis Biggs at 940-484-2842 to RSVP. All DCBA members are invited to attend and become members (we do not have dues). Lunch is not included. No CLE.

TEXAS ADVANCED PARALEGAL SEMINAR

DATE:

September 29–October 1, 2010

LOCATION:

DoubleTree Hotel, Austin, TX

REGISTRATION:

For registration, please go to www.txpd.org.



Evaluating Evaluation Reports

By John A. Zervopoulos, Ph.D., J.D., ABPP; www.psychologylawpartners.com.

Ms. Jones, mom's lawyer, was confused and startled. She had just reviewed a 25-page evaluation report of her client's family that reflected generally accepted procedures for conducting a psychological evaluation; the evaluator interviewed both parents and the children, administered tests, talked with collateral sources, and reviewed appropriate records. But the first 20 pages merely reported interview information and computer-generated narrations of the test profiles the parents produced. The final five pages, which contained very few connections to the previous pages, detailed stark recommendations that the primary custody of the children should be changed immediately from mom's residence to dad's.

Unfortunately, forensic reports that do not adequately integrate data with opinions and recommendations are too common.

Lawyers voice other concerns of reports. They complain that reports are too short, too long, or too steeped in difficult-to-define psychological terms like self-esteem, attachment, or emotional trauma. Lawyers also worry that evaluators seek irrelevant data to support questionable opinions. Lawyers are apt to agree that they don't know what makes for a good psychological evaluation report, except when they agree with the report's opinions.

Nevertheless, lawyers can size-up forensic psychological reports by considering three key issues. First, what is the purpose of an expert's report? Second, how should the report be organized? Third and last, what

components should a competent forensic report include? These issues reflect legal admissibility demands as well as psychology ethics codes and practice guidelines requirements. As a result, these issues guide direct and cross-examinations of experts and provide a road map for presenting evaluation report issues to the court.

Forensic reports have a specific purpose: to document experts' opinions and the bases for those opinions, including test results and supporting data. See Tex. R. Civ. P. 204.2 (a); 195.3(a)(1); 195.5. This purpose is tied to the legal demands of expert testimony. To be admissible as evidence, expert testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue..." This requirement is the "gateway" to allowing the expert on the stand—if the testimony will not "assist," it will be disallowed. Expert testimony can only "assist the trier of fact" if the testimony is relevant (the expert uses his expertise to address specific case issues), and if the expert employed reliable methods and reasoning to develop her opinion—the familiar Daubert and Robinson admissibility demands.

Texas case law further illustrates the purpose for court-appointed psychologists in child custody cases. Psychologists act "as a fact finder for the court," and the court "relies on the professional to provide information essential to the decision-making process." *Delcourt v. Silverman*, 919 S.W.2d 777, 783 (Tex. App.—Houston 1996, no writ). That is, relevant expert testimony and supporting reports address and are driven by

specific referral questions. The Texas Psychology Board's ethics code makes similar demands: psychologists "produce reports that clearly state and accurately reflect the scope and purpose of evaluation, assessment, and testing." 22 Tex. Admin. Code §465.16 (a)(2). Also, psychologists who conduct forensic evaluations must "not exceed the scope of the referral." 22 Tex. Admin. Code §465.18 (d)(4).

Unfortunately, evaluators may veer from an evaluation's purpose and risk admissibility questions for the report when they adopt one of two common approaches: the "fishing expedition," or the clinical rather than a forensic perspective. Evaluators "go fishing" when they probe examinees with questions that relate little, if at all, to the evaluation's specific referral questions or when they routinely demand examinees' private records. Sometimes, the line defining the appropriateness of seeking such information is gray, particularly in family cases focused on the child's best interest. But requests for tax records, credit card statements, phone bills, or other personal documents may overstep confidentiality boundaries to which examinees are otherwise legally entitled. Although rationalized as part of a comprehensive evaluation, such requests may exceed the evaluation's "scope and purpose."

A more difficult problem to discern is the difference between clinically-based reports and forensic reports. Both reports may explore emotional or family problems, capacities for good judgment, or intellectual deficits. But the focus of these reports differ. Clinically-based

From our Sponsors

reports are more counseling or assessment oriented and, in a forensic context, may seem overly focused on psychological descriptions of the examinees at the expense of addressing the court's concerns. Clinically-based reports also often reflect a therapist/examiner-patient loyalty that may interfere with the more objective information the court seeks.

In contrast, the forensic report, investigative rather than treatment or self-improvement oriented, focuses on specific referral questions that address particular case concerns. This purpose-oriented process is designed to "assist the court," not the examinee.

For a first step, then, Ms. Jones may critique the forensic evaluation report she reviewed by assessing how well the evaluator used the examination's purpose, defined by specific referral questions, to guide the inquiry and frame the opinions. In the next two columns, we will explore the organization and components of evaluation reports.

John A. Zervopoulos, Ph.D., J.D., ABPP is a forensic psychologist and lawyer who directs PsychologyLaw Partners. He can be contacted at 972-458-8007 or by email at jzerv@psychologylawpartners.com.

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DCBA in 2010-11

September Bar Luncheon

Date:

Friday, September 10, Noon
Meal included

Location:

Oakmont Country Club
1901 Oakmont Drive
Corinth, Texas 76210

Program:

*Your Reliability Tool Box: Using
Daubert Factors to Challenge
Mental Health Testimony*

Speaker:

John A. Zervopoulos

October Bar Luncheon

Date:

Friday, October 1, Noon
Meal included

Location:

Oakmont Country Club
1901 Oakmont Drive
Corinth, Texas 76210

Program:

Technology in the Courtroom

Speaker:

Rick Hagen

Announcing The How-To Attorney Adoption Day Training for Attorneys

Date:

Friday, September 10, 9:00 AM

Location:

Denton County Court House,
Central Jury Room

Registration:

To RSVP please contact Michelle
Houston at 940-320-1500 or
mhouston@dentonbar.com.

Condolences

DCBA would like to express our
condolences to Kammy Timmons
Hood, on the passing of her daughter,
Peyton Hood, on August 11, 2010.