



Attorneys Saddled Up to Earn Their Ad Litem Certification

By Andrea C. Timmons, Timmons Law Office; www.timmonsloffice.com.

Using a Western theme most likely created by the talented Charles Beasley, Judges Bonnie Robison, and David Jahn saddled up and rode to victory with their first Probate, Guardianship and Ad Litem Seminar held October 7th at the Oakmont Country Club in Corinth.

With the 85 attendees and speakers, including the best Western-dressed Judge Steve King of Fort Worth, Judge Robison initiated the on-going conversation of the day on her opinion of the need for a changed role of the Ad Litem in Denton County guardianships. Judge Bonnie, as she referred to herself, stated she sees the role as more restrictive in the involvement of the Ad Litem in a case. She also favors the use of temporary guardianships.

Judge Bonnie remarked that she would be appointing attorneys to serve as an Attorney Ad Litem, not in a dual capacity of Attorney/Guardian Ad Litem. She stated that a Guardian Ad Litem could or would be appointed later if it is shown that a Guardian Ad Litem is needed. She also foresees that in a contested case among siblings wanting to serve as guardian, for example, that the role of the Attorney Ad Litem should be limited to actions involving the determination

of incapacity, but that such would be determined on a case-by-case basis.

After Judge Bonnie, Paula Flowerday, Auditor/Attorney for the Probate Court, braved the stampede of questions following her presentation of the changes being made in the applications and fee structure for payment of Ad Litem. Dominant among the questions was which Ad Litem activity(s) should be charged at a guardian-level fee versus which should be charged at a legal services rate since the variation in the rates will impact the final fee to be received by an Ad Litem for work performed.

Moving on to other areas, new and experienced attendees benefited from the update on Special Needs Trusts, Medicaid, Medicare, and Veterans Benefits eligibility provided by an

Ad Litem continued on page 4.



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From the President

Transition to Practice Mentor Program

A year or so ago I had the opportunity to hear one of my favorite probate lawyers, Ed Smith of Dallas, give an ethics presentation during lunch at a seminar. His topic was professionalism, a topic that has always drawn my interest. Over the course of my career I've worked with (and against) many lawyers, most of whom impressed me with their honesty and integrity, and, frankly, some of whom have disappointed me in that regard. I'm very proud of our profession and the role we, as lawyers, play in a free and open society. We hold the public trust as we are responsible for the integrity of our legal system. As such trustees, we owe a duty of the highest level of civility, candor, and allegiance to our clients, the courts, and each other.

Ed spoke about the need for lawyers to support each other in our practice and to help new lawyers transition from law school to the practice of law. He mentioned a mentoring program initiated by

the Dallas Bar Association that encouraged mentors and mentees to have contact once per month for a period of one year. I thought it sounded like a wonderful idea and at that moment I decided that I would like to help implement such a program for our Bar association.

On the DCBA website, www.dentonbar.com, you will find an open letter from former State Bar President Roland Johnson, 2009-2010, during whose tenure the State Bar Transition to Practice Program was initiated. President Johnson's letter points out that, "During times like these, the benefits of mentoring are invaluable. As a profession we need to connect with young lawyers as early in their careers as possible to ensure that they are prepared for the responsible practice of law and are committed to professionalism." You will also find a letter from me encouraging you to join, as well as forms to enroll in the program. We have also included a "contract" that sets out the expectations for both mentor and mentee. The program anticipates only one contact per month for about one hour each and is designed to be



Dena A. Reecer, President

very low cost, if any at all. The Bar will provide one-hour CLE programs every other month or so devoted to ethics, law office management, billing, avoiding malpractice, professionalism, etc. In addition, the mentor and mentee are asked to have one social event together, which can include meeting for lunch or coffee. The program is open to all members, including both new lawyers and those transitioning to a new area of practice.

I am grateful to the mentors I've had in my career. I've learned that knowing the law is not enough—you have to learn how to listen to and counsel your clients. That skill develops over time and with

President, continued on page 6.

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• *Real Estate, Trust, and Probate*

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• *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.

Upcoming Events & CLE

2011 Denton County Adoption Day

The third annual Denton County Adoption Day was held on November 4, 2011 at the Denton County Court Building.

Almost 30 children were adopted into loving and happy families with the help of volunteers and attorneys.

For photos and more information on the event, please visit the Denton County Adoption Day facebook page at <http://www.facebook.com/dentoncountyadoptionday>.

Thank you to the sponsors who helped make this years Adoption Day happen. If you are interested in sponsoring for next years Adoption Day, you can make donations on facebook or contact Michelle Houston at 940-320-1500 or at mhouston@dentonbar.com.



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St. Phillips Church of Flower Mound Women's Club
TWU Practice Group III
UNT Non-Profit Leadership Student Association



Monthly Meetings

Collaborative Professionals

DCCP will meet at **9:00 AM** on Tuesday, **November 1**, at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

Family Law

Family Law will meet at **12:00 PM** on Thursday, **November 17**, in the Central Jury Room, 1450 E. McKinney St. in Denton.

Paralegals

DCPA will meet at **12:00 PM** on Thursday, **November 17**, at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

GDCYLA

GDCYLA will gather for their monthly:

- Meeting at **11:45 AM** on Thursday, **November 3**, at Greenhouse, 600 N. Locust St., in Denton.
- Happy Hour at **5:00 PM** on Thursday, **November 10**, at the offices of Hayes, Berry, White & Vanzant, 512 W. Hickory St., Ste. 100 in Denton.

REPTL

REPTL will meet at **11:45 PM** on Wednesday, **November 16**, at Oakmont Country Club, 1901 Oakmont Dr. in Corinth.

SHHHHHH! You're in the Library

By Andrew Lloyd, Lloyd Law Firm; www.lloydfirm.com.

August 25th, 2011 was one of the noisiest events in Denton County's Law Library's History—the Grand Re-Opening Party/Gala/Affair! It was attended by almost 100 attorneys and judges, who paraded in and out of the back reception room to enjoy some food and drink—provided by the Denton County Bar Association—in honor of the new digs. We even had librarians from adjoining counties appear, wanting to get a peek at what Denton County has accomplished. That ain't too shabby (pardon my grammatically poor colloquialism). It was fun to mingle and enjoy the camaraderie of fellow colleagues in an atmosphere that wasn't as "hush hush" as the setting would normally require.

Interestingly enough, though, patrons were still studying and working on the computers and tables during the Open House, proof of the Library's importance in the courthouse. The handcrafted shelves

were designed with practicality in mind, allowing readers to open resource books on pull out boards. They are also smaller than before. More computers are on order to encourage the library's use, also. This new aesthetically pleasing layout provides a more open atmosphere in the library. One doesn't feel nearly as cramped and oppressed by the heavy books around them. This was one of the major goals Thomas Reese of Denton County had in mind when assisting in the decision-making process.

Our Denton County Librarians

are constantly updating the materials and volumes. I was surprised about the helpful literature available on virtually every legal subject, even dozens of form and template manuals for pleadings. It really does feel more welcoming and inviting. The Denton County Bar Association, together with the Library Crew, welcomes and invites all those who have yet to enter to stop by and use the new and improved resource. Of course, the party is now over, so keep the noise level down in the future. Thank you for our new Law Library, Denton County.



Ad Litem continued from page 1.

expert, Rick Weaver from Rhome, Texas.

Those who have experience in the guardianship area of the law would agree that no one seeking such work should set forth without first reading all of Judge Steve King's Ad Litem Manual provided in its entirety in the seminar notebook. And, as Judge King himself stressed during his presentation, everyone should read the Probate Code and know the local rules of each Court. Judge King also encouraged attendees to first consider

his list of Less Restrictive Alternatives to Guardianship—all 37 of them—before moving forward with the guardianship process.

Derbha Jones and Richard Kelsey took on offering suggestions to rein in costly complex, contested Probate, Guardianship, and Trust Litigation ranging from using preliminary actions like a Motion in Limine, a Motion for Security for Costs, and contesting a pauper's affidavit, to Kelsey's admonition that "Anytime you step in front of the bench and ask a judge to make a ruling, you are engaged in

litigation whether contested or not," and "You have a responsibility to be the most effective advocate you can be." So, be prepared. Kelsey offered a bullet point list of steps to take in that preparation.

Next Jack Wilburn gave a concise blueprint of the practical and ethical considerations for Ad Litem emphasizing for Ad Litem to seek clarity in their role, to stay in bounds, and to remember what they are there to do in the case.

Jean Manion, Senior Court Investigator, and Missy Rainey,

Highlight Limitations to Clarify Expert Testimony

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

Mr. Smith, preparing to take a psychologist's deposition, puzzled over the confidently asserted opinions offered in the expert's recently submitted evaluation report. Cast in psychological jargon, the opinions did not reflect the case's complicated facts and strident allegations. Further, the psychologist spun a list of inadequately supported, overly prescriptive recommendations. Mr. Smith knew that asking the psychologist "How do you know what you say you know?" would be the key question around which to structure his deposition inquiries. That approach, consistently applied, would expose the bases of the expert's opinions, giving Mr. Smith the opportunity to gauge the quality of the expert's testimony, if not to provide a foundation for arguments to the court about the testimony's legal

relevance and reliability.

But when asking "How do you know what you say you know?", Mr. Smith should not be satisfied with answers that merely assert what the expert claims to know. Mr. Smith should also ask the expert about the limitations and boundaries of her opinions. The American Psychological Association's (APA) Ethics Code and Texas's psychology licensing board require psychologists to "indicate any significant limitations of their interpretations" and to "identify limits to the certainty with which diagnoses, judgments, or predictions can be made about people." This makes sense—from the perspectives of psychology and law. Explanations are always clearer when we understand what elements they include and exclude. Because an evaluation or review is a

time-limited, inductive process, all resulting conclusions and opinions have limitations and alternative explanations that the expert should have considered. For example, under what conditions does dad's depression interfere with his ability to parent his children safely? What circumstances appear to trigger mom's angry outbursts? In what settings does the young child not show anxieties when interacting with the noncustodial parent? Legally, the expert's ability to clarify her opinions and recommendations by describing their limitations will also help the court to determine the testimony's relevance and reliability.

Because exploring the limitations of the expert's opinions and recommendations clarifies the expert's

Expert Testimony continued on page 6.

Assistant Court Investigator, filled in knowledge gaps that new attendees might have had at the beginning of the day with their presentation on their investigator roles and their expectations of attorneys, Ad Litem, and clients in guardianship cases from the Court's perspective.

Judge Jahn closed out the seminar presentations with his detailed explanation of the Sections of the Texas Health and Safety Code that direct practicing in the Mental Health area. He related such to the rights and responsibilities of an Ad Litem dealing

with mental health issues of a proposed ward.

DCBA President, Dena Reecer, encouraged all participants at the seminar to consider signing up for the 2012 DCBA Transition to Practice Program. The day's program adjourned to a reception with Judge Robison.

Directions to Obtain your Guardian Ad Litem Certification

Credit for the DCBA Ad Litem Seminar has been registered for all attendees. To obtain your Guardian

Ad Litem Certificate follow these directions:

1. Go to www.texasbar.com (State Bar of Texas website)
2. Sign on to "My Bar Page"
3. In the left hand column click "View or report CLE Hours"
4. Under left hand column titled "MCLE" click "Guardian Ad Litem Certification"
5. Follow the directions on this page; you will be instructed to download an affidavit, return it to the bar with a check for \$25.00. The bar sends out the certification.

For Your Practice

Expert Testimony continued from page 5. testimony, prepare to ask limitations questions in all of your examinations of experts. On direct, use the expert's willingness to discuss limitations to enhance her credibility—no expert can know everything. On cross, use the opinions' limitations to chip away at the expert's confident assertions.

To explore limitations in the expert's opinions and recommendations, ask the expert about her evaluation methods and then probe about whether her opinions and recommendations are adequately based on data derived from those methods. Competent, generally-accepted forensic psychological evaluations include three elements: examinee interviews; psychological testing; and reviews of collateral sources—interviews of other people with relevant information and reviews of relevant records and documents. Address each of the three evaluation elements when asking about the expert's limitations. For example:

Interviewing:

How might your evaluation have benefited from more interviews of the litigants?

How might your opinions and recommendations be modified if you would have interviewed the litigants outside your office?

Were your interviews scheduled so that you could address with

the litigants questions that arose as you reviewed the testing and assessed collateral sources and information?

Testing:

Why did you administer the tests you used in this evaluation?

How did you use the results of each test in this evaluation?

What are the limitations of each test you used in this evaluation to address the evaluation's referral questions?

How did each litigant's life circumstances enhance or limit your interpretations of the test results?

Reviews of collateral sources:

What relevant records did you fail to review that could have strengthened your opinions and recommendations?

What persons with relevant information did you not interview who would have strengthened your opinions and recommendations?

A final question: Given the limitations of your methods, can the court have confidence in the relevance and reliability of your opinions and recommendations? Why?

Sharpen your direct and cross-examinations by including questions about the limitations of an expert's methods and conclusions. You will



expose the strengths and weaknesses of the expert's testimony and provide the court a clearer understanding of the reliability of that testimony.

John A. Zervopoulos, Ph.D., J.D., ABPP is a lawyer and a forensic psychologist who directs PsychologyLaw Partners, a forensic consulting service providing consultation to attorneys on psychological issues, records, and testimony. He can be contacted at 972-458-8007 or at jzerv@psychologylawpartners.com.

President, continued from page 2. experience. I've learned by watching my mentors deal with difficult situations and solve problems. I believe experienced lawyers have a lot of wisdom to pass on to new lawyers and I believe we have a duty to do so. That is not to say that the mentor program is one-sided—new lawyers

give us a fresh perspective and challenge us to stay abreast of changes in the law.

I hope that you will join me in this exciting new program for our local Bar association. We have a long tradition of collegiality within our Bar and I believe the mentor program will allow us to continue in that tradition.

Did you know...

That you can check available DCAP mediation dates, obtain scheduling forms and other information online?

Simply search online at www.dentonadr.com.

From our Sponsors

DCBA Holiday Party

Date:

December 15, 2011 5:00–9:00 pm

Location:

Giuseppe's
821 North Locust Street
Denton, TX 76201

Details:

Come join the DCBA for food, drinks, and fun. Please RSVP to Michelle Houston at mhouston@dentonbar.com.

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Fall Office Closings

The DCBA and DCAP office will be closed on the following days to allow our staff to observe holidays.

- Thursday–Friday, November 24–25, 2011
- Friday–Friday, December 23–30, 2011

DCBA in 2011-12

November Bar Luncheon

Date:

Friday, November 4, Noon
Meal included

Location:

Oakmont Country Club
1901 Oakmont Drive
Corinth, Texas 76210

Program:

*A Cry in the Dark: Recognizing
Child Abuse and Attorneys' Responsibilities*

Speaker:

Cameron Cox and Kristy Sims
Piazza

December Bar Luncheon

Date:

Friday, December 2, Noon
Meal included

Location:

Oakmont Country Club
1901 Oakmont Drive
Corinth, Texas 76210

Program:

TBA

Speaker:

TBA

Announcing

Congratulations to Ryan Webster on the birth of his daughter, Emery Elizabeth Webster, born on September 27, 2011 at 7 lbs and 10 oz.



Condolences

DCBA would like to express our condolences to Don Windle and family, on the passing of his daughter, Amy Rebecca Windle, on September 17, 2011.

