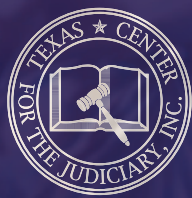


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# IN CHAMBERS

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# What Texas Judges Should Know About the U.S. Supreme Court's Docket

by EVAN A. YOUNG AND MATT WOOD

As usual, the U.S. Supreme Court's docket contains a few cases that have dominated the headlines. Issues that are not just legally challenging but also culturally contentious—like affirmative action and same-sex marriage—gobble up the media's attention. This article won't discuss them at all. Instead, it offers a brief tour of the cases most likely to actually affect Texas judges with criminal and civil jurisdiction.

## Criminal procedure: *Dogs and DNA*

A dog's sense of smell is more than 10,000 times more sensitive than a human's. Law enforcement has put this ability to good use, especially for drug detection (as anyone who has collected a suitcase after a trip abroad can attest). Are there constitutional restrictions on the use of these animals, or at least on the olfactory results? In a pair of rulings, the Supreme Court both endorsed the usefulness of canine noses and concluded that where the animal is used affects the lawfulness of any resulting information.

In *Florida v. Jardines*, the Court held that detectives committed an unconstitutional search when they took a drug-sniffing dog onto the front porch of a suspect's home *without a warrant*. Protection of the home lies at the core of the Fourth Amendment, and the home includes the area immediately outside the house—its “curtilage.” Justice Scalia's opinion for the Court acknowledged that homeowners give strangers—including law enforcement—

implied permission to knock on their doors. But that permission goes only so far. Kitchenware peddling might be authorized; searches to divine what is inside the house are not. The trial court correctly suppressed the evidence of the marijuana plants that were found in the suspect's home as a result of the warrantless canine search.

In *Florida v. Harris*, however, the Court found no problem in using a drug-sniffing dog outside a car. The Court nowhere described that use as a “search” for constitutional purposes. Moreover, the dog's “alert” was probable cause for a search inside the car because, based on the totality of the circumstances (including the dog's training and performance in the field), a reasonably prudent person would believe that the dog's alert was a reliable sign of contraband. The search in fact turned up no drugs, but officers did find ingredients for a methamphetamine cook.

Scent molecules aren't the only trace evidence occupying the Court's attention this term. Intrusions into a person's body to collect evidence are “searches” under the

Fourth Amendment. When can law enforcement conduct such searches without a warrant? The Court will address that question this term in two contexts—blood and DNA.

In *Missouri v. McNeely*, the Court considered whether police may extract blood samples from DWI suspects without a warrant. Texas law authorizes this practice in certain circumstances. Tex. Transp. Code § 724.012. Missouri argued that, as a constitutional matter, a warrant should never be required when an officer has probable cause to believe that a person has committed DWI. Its argument, which Justice Thomas accepted in his dissent, built upon the “exigent circumstances” exception to the warrant requirement. Because the body naturally destroys evidence of inebriation with the passage of time, as alcohol is purged from the bloodstream, Missouri believed that this metabolism created an exigency.

The majority, however, in an opinion by Justice Sotomayor, rejected this bright-line rule. The human body's elimination of



alcohol can be part of a finding of exigency, but it is insufficient standing alone. Courts must look to the totality of the circumstances. That is the black-letter rule, but one that can be maddeningly vague. Chief Justice Roberts began his separate opinion, concurring in part and dissenting in part, with this observation: “A police officer reading this Court’s opinion would have no idea—no idea—what the Fourth Amendment requires of him, once he decides to obtain a blood sample from a drunk driving suspect who has refused a breathalyzer test.” The Court offered little guidance about how to apply the totality-of-the-circumstances standard, except to reaffirm one of its prior decisions, which had upheld a warrantless blood draw. In that case, *Schmerber v. California* (1966), the DWI suspect had been injured in an automobile accident and the arresting officer had to take the suspect to the hospital and investigate the accident scene, leaving no time to secure a warrant.

Under this test, the extent to which Texas’s approach to warrantless blood sampling is consistent with Supreme Court precedent may become the subject of future litigation. Authority for warrantless sampling when an accident and injury occurred will likely survive. Other provisions, which allow warrantless sampling merely because a child is in the vehicle or the suspect has a history of DWI, may be challenged. One likely result of *McNeely* is that judges will be asked for quick warrants with little notice at inconvenient times. If the net effect is to require more

warrants in DWI cases, the impact is likely to be felt most keenly where judges are fewer in number, have a greater geographic scope, and are less readily available to review warrant applications.

The Court will also decide this term when the government may take DNA samples without consent. States vary in terms of how much authority they allow in this area. Texas law permits police to extract DNA samples from certain people charged with serious felonies. Tex. Gov’t Code § 411.1471. Maryland has a similar statute that authorizes DNA collection from persons charged with violent crimes or burglary. Courts around the country have generally upheld DNA collection from convicted persons but split when it comes to mere arrestees.

In *Maryland v. King*, the Court will resolve a challenge to Maryland’s DNA-collection statute. The objection turns on the argument that taking and analyzing a DNA sample from someone merely under arrest—not convicted—is itself an unconstitutional search. After King was arrested for assault, Maryland authorities took a mouth swab and collected the resulting DNA sample. The sample was found to match DNA evidence obtained from an unrelated rape. King was charged with the rape and convicted. The Maryland Court of Appeals reversed the conviction. In its view, the DNA evidence was obtained in violation of the U.S. Constitution and should have been suppressed. Because of the federal basis for suppression, the Supreme Court granted certiorari.

The case pits states' interests in identifying suspects and solving cold cases against suspects' right to the privacy of their genetic information. One interesting and key issue is how many "searches" actually took place. Maryland contends that there was one search, beginning when the sample was taken and ending when the sample was analyzed. The Maryland Court of Appeals concluded that there were two searches—one for the mouth swab, and a second when the sample was analyzed. The latter position would treat the genome in a person's discarded cells in much the same way as the home—as a protected space off-limits from wanton (or merely un-warranted) government intrusion.

Stand by for the results of this case. At oral argument, Justice Alito described it as "the most important criminal procedure case this Court has had in decades." The Texas DNA collection statute may ultimately share the same fate as the Maryland statute, given the similarity between the two. Indeed, the Texas statute goes further and explicitly authorizes DNA collection from arrestees who haven't been charged as long as they've been convicted of a serious felony some time in the past.

## Preemption

Turning to civil questions, the Supreme Court will continue to explore when state tort law can reach FDA-approved generic drugs. Federal law imposes a "sameness" requirement on generic drugs. Without deviation, they must be the same composition, and carry the same labeling, as their brand-name versions. Based on this requirement, the Court has previously held that plaintiffs may not bring state-law failure-to-warn claims against generic drug makers who comply with federal labeling law. Otherwise, the drug makers would be subject to conflicting state and federal demands (and, indeed, potentially conflicting demands from state to state or jury to jury).

In *Mutual Pharmaceutical Company v. Bartlett*, the Court will decide whether generic drug makers whose drugs are identical to approved brand-name versions can be sued on state *design-defect* claims. Bartlett suffered extreme side effects after taking a prescription painkiller. She was left with burns over 60% of her

body, virtually blind, and unable to eat normally—a truly horrific result that was in no way her fault. She sued the generic drug maker and alleged that the drug was unreasonably dangerous to consumers. The lower courts allowed the claim to proceed, seeing no conflict between federal and state law because the drug maker could comply with both sets of laws—by simply not selling the drug. *Bartlett* may test the limits of the Court's willingness to federalize the regulation of generic drugs.

The Court will also revisit the preemptive effect of a federal deregulatory statute. In 1980, Congress deregulated the motor-carrier industry (e.g., commercial trucking). It did so in part by passing a federal statute that preempts most state laws regulating "the transportation of property" by motor carriers. 49 U.S.C. § 14501(c)(1). In *Dan's City Used Cars, Inc. v. Pelkey*, the Court will decide whether this statute preempts a car owner's state consumer-protection and tort claims against a towing company. Pelkey, confined to bed for a serious health condition, was unable to move his car when a snowstorm hit his apartment complex. According to complex rules, all cars that weren't evacuated were towed. (He was hospitalized before he even knew the car was gone; while in the hospital, he not only had a foot amputated but a heart attack too.) Dan's City towed the car, and then, as if Pelkey's luck wasn't bad enough already, sold it at auction—something it could only do if, among other things, it could certify that the car was worth less than \$500. At issue is whether Pelkey can sue Dan's City for making false statements and wrongfully disposing of his car *after* the actual towing of the car (something Pelkey agrees he could not sue over) was complete. Were the Court to find preemption, a wide swath of activity by motor carriers beyond the actual carriage of goods would be insulated from state regulation and causes of action.

## Federal-versus-State Jurisdiction

Related to preemption, the Court has already handed down a decision this term clarifying the scope of state jurisdiction over patent-related claims. Federal law gives federal courts exclusive jurisdiction over cases "arising under" the federal patent laws. 28 U.S.C. § 1338(a). This exclusive jurisdiction extends not only to causes of action created by federal patent law, like patent infringement,

but also to state-law causes of action that contain a “substantial” embedded question of federal patent law. In *Gunn v. Minton*, a case coming from Texas, the Court addressed whether a state-law claim for attorney malpractice in a patent case must, on the latter basis, be brought only in federal court.

The alleged malpractice was committed during a patent-infringement suit. Malpractice claims often entail a “case within a case”—that is, a showing that the prior case would have turned out differently absent the alleged malpractice. Where the prior case was for patent infringement, the infringement claim effectively has to be retried—a seemingly “substantial” role for federal patent law, which Congress might logically reserve to federal courts.

But this was not enough for the Court. The Court clarified that an embedded federal question is only “substantial” for jurisdictional purposes if it is important for the *federal system as a whole*, and not just the litigants or case at hand. The test is met by cases that question the validity of federal agency action or the constitutionality of a federal statute. State-law claims for attorney malpractice, the Court observed, will rarely, if ever, qualify. The Court also noted that the regulation of attorneys has primarily been the responsibility of the states, and it was wary of altering the federal-state balance. *Gunn* should make it harder for patent-related state-law claims to qualify for exclusive federal jurisdiction.

## Due process

Due-process issues arise in both criminal and civil contexts. The Court has two primary cases of interest to Texas judges, one for each side of the docket.

A bedrock requirement of due process is that the criminal law be predictable. But this requirement sometimes collides with the essential role of judges in interpreting the law. In *Metrish v. Lancaster*, the Court will revisit when a new judicial interpretation of a criminal statute can be applied to pending criminal cases. Lancaster intended to negate *mens rea* at his murder trial by raising the defense of “diminished capacity.” Before trial, however, the Michigan Supreme Court held in a different case that the defense had been abolished by state statute. Lancaster argued that applying this decision in his case (and depriving

him of his intended defense) would violate due process. Under the U.S. Supreme Court’s precedent, Lancaster’s hurdle is high—the new decision can be applied retroactively unless it was “unexpected and indefensible” in light of preexisting law. How the Court resolves *Metrish* will help predict how other changes in the criminal law may be applied in pending cases.

On the civil side, the Court is returning to its exploration of the outer limits of personal jurisdiction. Over time, this limit has moved from a strict requirement that a defendant be physically present in the forum to a more expansive search for minimum contacts with the forum. Minimum contacts can exist even if the defendant never set foot in the forum, as long as he or she “expressly aimed” an action at the forum and harm was felt there. In *Walden v. Fiore*, the Court will decide just how minimal these minimum contacts can be. There, two professional gamblers were traveling to Las Vegas, Nevada, with \$97,000 in cash stuffed in their suitcases. During a layover at the Atlanta, Georgia airport, a drug-sniffing dog alerted a police officer to the possible presence of contraband in one of the suitcases. The officer searched the suitcases and seized the funds for possible forfeiture as drug proceeds. During the officer’s questioning of the gamblers, they informed him that they had a residence in Nevada, though they showed him California driver’s licenses. The funds were eventually returned to the gamblers, but they sued the officer in Nevada federal court. The issue before the Court is whether the officer’s knowledge that the plaintiffs were traveling to and resided in Nevada, standing alone, is a sufficient “contact” with Nevada to warrant personal jurisdiction there. If jurisdiction is found to exist, the case could dramatically expand plaintiffs’ ability to sue in their home states.



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## Issues in Credit Card Cases - *Part II*<sup>1</sup>

—by RANDALL L. SAROSDY<sup>2</sup>

Requests for admissions have been widely used in suits to collect credit card debt in Texas. Two factors explain this widespread use. First, in many of these suits the credit card debt has been written off by the bank or other party that extended the credit and the debt has been assigned for collection to a third party, such as Unifund CCR Partners, LVNV Funding, Dodeka or Michael Scott & Associates, for collection. Typically, when the debt is assigned in this manner the assignee does not receive detailed records of the transactions on the account but only a computer generated print out of the amount allegedly due. Therefore, the assignee does not have sufficient business records to prove up the history of the underlying transactions but only a summary of the debt and the charges that have allegedly accrued. Second, many of these cases are for relatively small amounts and the prospects for collection are often remote. Although the assignees may have paid only pennies on the dollar to acquire the debt, their realization in collecting the debt depends on obtaining judgments with a minimum of expense. The use of requests for admissions, particularly against pro se defendants, to prove up their case in these circumstances is hardly surprising.

This widespread use has given rise to the following issues: (1) May requests for admissions be embedded in a petition, and if so what practical effects does this have? (2) What limits, if any, apply to the scope of requests for admissions? And (3) When must the court permit a party to withdraw deemed admissions?<sup>3</sup>

### I. Overview of Requests for Admissions under Tex. R. Civ. P. 198

On its face Rule 198 of the Texas Rules of Civil Procedure is simply a discovery tool designed to eliminate issues that are not in dispute from a case thereby narrowing the genuine issues for trial and avoiding the need to spend time on matters as to which there is no controversy.

Rule 198.1 permits a party to serve upon another party, at least 30 days before the end of the discovery period, “written requests that the other party admit the truth of any matter within the scope of discovery, including statements of opinion or of fact or of the application of law to fact, or the genuineness of any documents served with the request or otherwise made available for inspection and copying.” The party serving the requests must state separately each matter for which an admission is requested. *Id.*

Rule 198.2 prescribes the time for responding, the contents of the response and the effect of failing to respond on time. Under Rule 198.2(a), a party upon whom a request for admissions has been served “must serve a written response on the requesting party within 30 days after service of the request, except that a defendant served with a request before the defendant’s answer is due need not respond until 50 days after service of the request.”

Under Rule 198.2(b), if the responding party does not state an objection or assert a privilege, then the party must “specifically admit or deny the request or explain in detail the reasons” for not being able to do so. The response “must fairly meet the substance of the request” and the responding party “may qualify an answer, or deny a request in part, only when good faith requires.” It is not a proper response to state that the party lacks information or knowledge “unless the responding party states that a reasonable inquiry was made but that the information known or easily obtainable is insufficient to enable the responding party to admit or deny.” And it is not a proper response simply to assert that the request presents an issue for trial.

If a response is not timely served, then under Rule 198.2(c) “the request is considered admitted without the necessity of a court order.”

Rule 198.3 prescribes the effect of an admission and the procedure for withdrawal or amendment. Significantly, it states that a “matter admitted under this rule is **conclusively** established as to the party making the admission unless the court permits the party to withdraw or amend the admission.” The court **may** permit the party to withdraw or amend the admission if: “(a) the party shows good cause for the withdrawal or amendment; and (b) the court finds that the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the action will be subserved by permitting the party to amend or withdraw the admission.” The rule also makes it clear that an admission made by a party “may be used solely in the pending action and not in any other proceeding.”

As noted above, requests for admissions have been used extensively in credit card cases in ways that raise important legal issues.

## II. May Requests for Admissions be Embedded in a Petition?

One common approach that plaintiffs in credit card collection actions have utilized is to “embed” requests for admissions within a petition. Rather than serving a separate set of requests for admissions, or other discovery requests, as a stand-alone document in addition to and apart from the petition, these plaintiffs simply incorporate the requests for admissions within the petition, either in the body of the petition itself or immediately after the prayer for relief but before the signature block. Is this practice proper and if so what practical effect does it have on a plaintiff’s ability to obtain a default judgment or summary judgment?

On their face the Texas Rules of Civil Procedure would seem to prohibit, or at least strongly discourage, this practice. First, the rules clearly distinguish between the contents of the petition and discovery requests. Rule 79 states that the “petition shall state the names of the parties and their residences, if known, together with the contents prescribed in Rule 47 . . . .” Rule 47 in turn states that an original pleading setting forth a claim for relief shall contain: “(a) a short statement of the cause of action sufficient to give fair notice of the claim involved; (b) in all claims for unliquidated damages only the statement that the damages are within the jurisdictional limits of the court, and (c) a demand for judgment for all the other relief to which the party deems himself entitled.” *See also Tex. R. Civ. P. 45* (pleadings shall be by petition and answer and consist of a statement in plain and concise language of the

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plaintiff's cause of action or the defendant's grounds of defense); *Tex. R. Civ. P. 46* (original and every other petition shall be contained in one instrument); *Tex. R. Civ. P. 48* (party may set forth alternative claims or defenses). Rule 22 states: "A civil suit in the district or county court shall be commenced by a petition filed in the office of the clerk." Thus, the petition **must be filed**. By contrast, discovery requests to be served on parties, including requests for admissions, "**must not be filed**." *Tex. R. Civ. P. 191.4(a)*<sup>4</sup>. By embedding the requests for admissions in the petition, a plaintiff would appear to be circumventing this prohibition.

Second, different response times apply to the petition and discovery requests. A defendant has until the Monday following twenty days after service of the citation to file an answer to a petition but a party has 50 days to respond to requests for admissions when served before the defendant's answer is due. *Compare Tex. R. Civ. P. 99* with *Tex. R. Civ. P. 198.2(a)*. By embedding the requests in the petition, the plaintiff may create confusion as to the response time for the requests or cause the defendant to be deprived of up to 30 days that the rules give the defendant to respond to the requests for admissions.

Finally, what happens if a defendant simply files a general denial to a petition in which requests for admissions are embedded? Rule 92 states that a general denial "of matters pleaded by the adverse party which are not required to be denied under oath, shall be sufficient to put the same in issue." Responses to requests for admissions are not required to be denied under oath. Therefore, if a plaintiff chooses to embed requests for admissions in a petition and the defendant files a general denial, would this not constitute a denial of each request? Again, at a minimum embedding the requests creates confusion as to the appropriate response required by the defendant.

These issues have been addressed in varying degrees and with different results by several courts. In *Sherman Acquisition II, LP v. Garcia*, 229 S.W.3d 802, 812-13 (Tex. App.—Waco 2007, no pet.), the Tenth Court of Appeals held that deemed admissions established the amount of unliquidated damages that the plaintiff had failed to establish through defective affidavits.<sup>5</sup> The plaintiff in that case had embedded the requests for admissions in the petition. *Id.* at 812. The court noted that "no objection is made to this procedure and by our holding we express no opinion upon the propriety of this form of request for admissions or its service." *Id.* Since Garcia had failed to respond to the requests, they were deemed admitted and based on these admissions the court held:

Because the trial court would have been able to ascertain the amount of damages and attorney's fees based on the request for admissions, we conclude that the evidence conclusively established the amount of damages to Sherman and attorney's fees and that the trial court erred in failing to render judgment for Sherman.

*Id.* at 813.

In *Lee v. Unifund CCR Partners*, 2008 WL 3539938 (Tex. App.—Austin Aug. 15, 2008, no pet.), the Third Court of Appeals affirmed the trial court's decision granting summary judgment based upon requests that were deemed admitted when they were embedded in the petition and the defendant filed a general denial to the petition but did not separately object to or answer each request for admission. The court of appeals held the defendant, Ms. Lee, had not objected to Unifund's embedding of the requests for admissions in the petition and therefore had waived her complaint that the requests were improperly served. Because the court found that Ms. Lee had waived her objection, it held that it did not need to decide whether embedding requests for admissions in a petition violates the Texas Rules of Civil Procedure. 2008 WL 3539938 at \*2 n.1. The court also held that Ms. Lee's general denial did not constitute a denial of each and every request for admission and that the general denial did "not constitute a proper response or objection as required by Rule 198.2(b)." 2008 WL 3539938 at \*2.

In *Crown Asset Mgmt., L.L.C. v. Loring*, 2009 WL 2596101 (Tex. App.—Dallas Aug. 25, 2009, no pet.), the Fifth Court of Appeals *en banc* affirmed the trial court’s denial of plaintiff’s motion for default judgment and dismissal of the case for failure to prosecute because the petition did not give fair notice of the claim. The trial court also refused to consider alleged deemed admissions because the requests for admissions had been embedded in the petition and were not “served after suit was filed.” *Id.* at \*4. The majority of the court of appeals did not accept the dissent’s contention that requests for admissions may be embedded in a petition at least if there is no objection. *Id.* at \*7.<sup>6</sup>

Finally, in *Hankston v. Equable Ascent Financial*, 382 S.W.3d 631 (Tex. App.—Beaumont 2012, no pet.), the Ninth Court of Appeals reversed the trial court’s default judgment and refused to treat requests for admissions embedded in a petition as deemed admissions. The court held:

Including the discovery requests in the petition confuses the different purposes of discovery and pleading; the questionable procedure followed by appellee worked to diminish the function of the pleading. *See Tex. R. Civ. P. 45, 46, 47; see also generally Stoner*, 578 S.W.2d at 683 (fair notice requirement). The pleading includes two separate instructions that the responses are due 50 days after service of the requests. Without further explanation, appellee also alleges in the petition that the 50 day deadline “does not alter any deadline to answer this lawsuit as set forth in the citation.” Before the 50 days expired, appellee had obtained the default judgment.

By signing a discovery request, an attorney certifies that the discovery request “is consistent with the rules of civil procedure and these discovery rules[.]” *See Tex. R. Civ. P. 191.3(c)(1)*. Rule 191.4 provides in part that discovery requests to parties are not to be filed, but the petition with the embedded discovery requests was filed, a reflection of the inconsistency of appellee’s document. *See Tex. R. Civ. P. 191.4*. “The permissible forms of discovery may be combined in the same document and may be taken in any order or sequence.” *Tex. R. Civ. P. 192.2*. But the Rules of Civil Procedure do not authorize the inclusion of a discovery request in a petition or as an exhibit to the petition. *See Tex. R. Civ. P. 45, 46* (“one instrument of writing”), 59 (“No other instrument of writing shall be made an exhibit in the pleading.”), 191.4. The effect of the embedding was to create conflicting dates for responses to a single writing. Though appellant responded to the request for admissions, appellant did not timely answer the petition. Default judgment was rendered before responses to the discovery requests were due.

382 S.W.3d at 635.

It is respectfully submitted that *Hankston* and *Crown Loring*, which disapprove of the practice of embedding requests for admissions in a petition, apply the better rule. The Texas Rules of Civil Procedure simply do not contemplate the practice of embedding requests for admissions in a petition and the practice may easily lead to confusion and unfairness for the reasons discussed above and in *Hankston*.

In any event, a trial court could clarify the procedure through its local rules or a standing discovery order providing that requests for admissions may not be embedded in a petition and that a party who does so may not rely on alleged deemed admissions from such requests for any purpose in the case, including in connection with a motion for summary judgment or for a default judgment.

### III. What Limits, if any, Apply to the Scope of Requests for Admissions?

Typical requests for admissions in credit card cases include the following:

Admit that the Account is just and true.

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Admit that the Defendant knew that Defendant did not have the ability to pay for the purchases at the time Defendant purchased the goods and/or services at issue in this cause.

Admit that Plaintiff is entitled to pre- and post-judgment interest, court costs and attorney's fees from Defendant as alleged in Plaintiff's most recently filed Petition.

Admit that the facts alleged in Plaintiff's most recently filed Petition are entirely true and Plaintiff is entitled to the requested relief.

Admit that there are no documents which support any defense in this cause.

Admit that the Defendant has no offset, credit or claim against Plaintiff.

Admit that the Court should render judgment against Defendant for the relief requested in Plaintiff's most recently filed Petition.

Admit that the charges made on the Account were not for luxuries.

Admit that Defendant did not have the ability to repay any of the charges that Defendant made on the Account at the time Defendant made such charges.

Admit that jurisdiction and venue are proper in this case.

Admit that the debt represented by the Account is not dischargeable in bankruptcy under the facts of this case.

Admit that Defendant is currently insolvent.<sup>7</sup>

The account made the basis of this lawsuit is appropriate for a suit on a sworn account.

The affidavit attached to the Plaintiff's original petition and any amendments has all necessary elements to prove up to the existence of the account made the basis of this lawsuit, the principal amount due, prejudgment interest and/or that Plaintiff is the assignee of the original creditor or its assignee.

That if Plaintiff is not the original creditor, Plaintiff is the assignee of the original creditor or the assignee of the original creditor's assignee of the account made the basis of this lawsuit.

The Plaintiff, its assignor and/or the original creditor of the account made the basis of this lawsuit relied to its detriment on your promise to satisfy full repayment including interest.

The Plaintiff, its assignor and/or the original creditor of the account made the basis of this lawsuit has performed its promises under the agreement which established the account.

You are unable to articulate a reason that would justify not paying the debt reflected as due and owing.<sup>8</sup>

Admit or Deny that all just credits and offsets have been applied to your account.

Admit or Deny that all requirements and notices have been sent or given.<sup>9</sup>

Midland Funding LLC is the proper party to bring suit against the Defendant, Richard B. Stewart.

The Defendant, Richard B. Stewart, has been sued in the proper capacity.

Defendant has no defense to this suit, and judgment should be granted, as prayed for.<sup>10</sup>

In the majority of credit card cases a pro se defendant will not object or respond to such requests for admissions and the court will be asked to enter a default or summary judgment based on the evidence submitted by the plaintiff at a prove up hearing.<sup>11</sup> In the absence of any objection (or even appearance) by the defendant, the court may proceed to enter judgment assuming it is satisfied with the plaintiff's proof of damages. But recent cases have identified certain limits on the use of requests for admissions even if an objection is not raised in the trial court.

In *Luke v. Unifund CCR Partners*, 2007 WL 2460327 at \*4 (Tex. App.—Fort Worth Aug. 31, 2007, no pet.), a credit card holder failed to respond to requests for admissions which were deemed admitted. The trial court granted summary judgment but the court of appeals reversed because the requests for admissions were internally inconsistent and actually created a material issue of fact.<sup>12</sup> The court held that where the admissions create fact issues, they are not sufficient to support summary judgment and the court will look to other evidence. Here there was not sufficient support in the affidavits attached to the motion for summary judgment for the trial court to award \$22,938.87 or to award interest of 29.74%. *Id.* at \*5.

The court in *Luke* relied on *CEBI Metal Sanayi Ve Ticaret A.S. v. Garcia*, 108 S.W.3d 464, 466 (Tex. App.—Houston [14th Dist.] 2003, no pet.), in which the requests for admissions were self-contradictory: “Because each of Garcia’s requests was paired with its opposite, they conclusively established every proposition *and its opposite as well.*” The court held that when all of the requests for admissions were deemed admitted, they *created* fact questions rather than resolving them, that Garcia could not avoid the conflict by relying on only half of his requests, and that summary judgment could not be sustained based on those requests or the remaining evidence submitted in support of his motion. *Id.*

In *Rolen v. LVNV Funding, LLC*, 2010 WL 1633402, at \*5 (Tex. App.—Fort Worth Apr. 22, 2010, no pet.), the Second Court of Appeals held that LVNV had failed “to allege facts to support the bases for its suit, including . . . the basis for an assignment.” The confusion stemmed from LVNV’s repeated use of the phrase “and/or” in its petition and in its requests for admissions. The court held: “The deemed admissions do not clarify whether LVNV can sue because LVNV had a contract with Rolen itself or because LVNV acquired a contract as an assignee. LVNV asked Rolen to ‘[a]dmit [she] entered an agreement whereby *Plaintiff or Plaintiff’s original assignor* extended credit to [her]’ and to ‘[a]dmit [she] promised to pay *Plaintiff or Plaintiff’s original assignor* on the credit account the subject of this suit.’” (Emphasis in original.) See also *Ayers v. Target National Bank*, 2012 WL 3043043, at \*3-\*4 (Tex. App.—Houston [14th Dist.] July 26, 2012 (no pet.) (requests were vague). Compare *In re United Scaffolding, Inc.*, 377 S.W.3d 685, 689-90 (Tex. 2012) (trial court required to issue a new order granting a new trial that resolved ambiguity created by its use of the phrase “and/or” in list of reasons and must elaborate on how the jury’s answers were contrary to the great weight and preponderance of the evidence).

Two recent cases not involving the collection of credit card debt place similar limits on the use of requests for admissions. In *Cedyco Corp. v. Whitehead*, 253 S.W.3d 877, 880-81 (Tex. App.—Beaumont 2008, pet. denied), the requested admissions were that “the sole current legal owner of the judgment is Anderson Martin Whitehead,” that “Defendant Cedyco Corporation is not the current legal owner of the Judgment” and that “Reasonable and necessary legal fees of the plaintiff in this suit are \$25,000.00.” The Ninth Court of Appeals reversed the trial court’s grant of summary judgment and held:

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The deemed admissions Numbers 8 and 9, as quoted above, are purely questions of law and, therefore, are improper summary judgment evidence. . . . *Boulet*, 189 S.W.3d at 838 (summary judgment may not be sustained by deemed admissions that ‘embrace the fundamental legal issues to be tried’); *Gore v. Cunningham*, 297 S.W.2d 287, 291 (Tex. Civ. App.—Beaumont 1956, writ ref’d n.r.e.) (requests for admissions exist “to eliminate in advance of the trial fact issues which would not be in dispute and . . . the rule does not contemplate or authorize admissions to questions involving points of law.”).

253 S.W.3d at 881. The court explained:

Admissions of *fact* on file at the time of a summary judgment hearing are proper summary judgment proof and will, therefore, support a motion for summary judgment. [citations omitted] However, a request for admissions asking a party to admit or deny a purely legal issue is improper, and a deemed admission involving a purely legal issue is of no effect. [citations omitted] This is so because the primary purpose of requests for admissions is to simplify trials by eliminating matters about which there is no real controversy. [citation omitted] “It was never intended to be used as a demand upon a plaintiff or defendant to admit that he had no cause of action or ground of defense.” [citations omitted]

*Id.* at 880.

And in *Lucas v. Clark*, 347 S.W.3d 800 (Tex. App.—Austin 2011, pet. denied), the Third Court of Appeals held that deemed admissions were insufficient to support the trial court’s damages award and that no objection was necessary to preserve for appellate review the question of a deemed admission’s overbreadth. In that case a default judgment was entered in favor of Plaintiffs Eonic Creations, Inc. and James Jolly Clark against the Defendant C. Michael Lucas on claims of breach of contract and tortious conduct. The trial court awarded unliquidated damages of \$75,000 to Clark and \$9,925,000 to Eonic Creations based solely on two deemed admissions that had been embedded in a petition. The two requests for admissions were as follows:

Request for Admission 1: The contract attached to this petition as Exhibit A is a true and accurate copy of the contract that you signed and entered into on or about May 22, 2009.

Request for Admission 2: As a proximate result of your breaching the contract made the basis of this suit, the Plaintiffs have suffered consequential damages in an amount not less than ten million dollars.

347 S.W.3d at 802. Lucas did not file an answer to the petition or a response to the requests for admissions.<sup>13</sup> The trial court entered a default judgment in favor of the plaintiffs and awarded unliquidated “actual damages” of \$75,000 to Clark and \$9,925,000 to Eonic Creations. On appeal Lucas argued that the damage awards were not supported by legally and factually sufficient evidence and that supporting a no-answer default judgment’s unliquidated damages award with requests for admissions embedded in a petition was “inappropriate” and undermined *Tex. R. Civ. P. 243*. *Id.* at 802-03.

The court of appeals noted that after a default judgment occurs, “unliquidated damages, i.e., damages not expressly provided for within a written instrument, must be proven to the trial court. *See Tex. R. Civ. P. 243*. Recovery for unliquidated damages in the form of lost profits . . . requires that the injured party do more than show that it suffered some lost profits. The amount of the loss must be shown by competent evidence with reasonable certainty.” *Id.* (citations omitted) The plaintiffs relied solely on Request for Admission 2, which was embedded in their petition, to prove that they suffered \$10 million of unliquidated damages in the form of lost profits. *Id.* at 803.

The court explained the purpose of requests for admissions as follows:

The primary purpose of requests for admissions is to “simplify trials by eliminating matters about which there is no real controversy.” *Stelly v. Papania*, 927 S.W.2d 620, 622 (Tex. 1996) (citing *Sanders v. Harder*, 148 Tex. 593, 227 S.W.2d 206, 208 (1950)). They were never intended to be used as a demand upon a plaintiff or defendant to admit that he had no cause of action or ground of defense. *Id.* Courts have cautioned that litigants should not be allowed to use requests for admissions as a tool to trap their opposition. See *Birido v. Hammers*, 842 S.W.2d 700, 701 (Tex. App.—Tyler 1992, no writ).

The rule regarding requests for admissions “was designed, not as a trap to prevent the presentation of the truth in a full hearing but as a tool for the fair disposition of litigation with a minimum of delay.” *Taylor v. Lewis*, 553 S.W.2d 153, 160 (Tex. Civ. App.—Amarillo 1977, writ ref’d n.r.e.). When a party uses deemed admissions to try to preclude presentation of the merits of a case, however, due process concerns may arise. *Wheeler v. Green*, 157 S.W.3d 439, 443 (Tex. 2005); *In re Rozelle*, 229 S.W.3d 757, 764 (Tex. App.—San Antonio 2007) (“[Due process] is the guiding rule and principle that applies when requests for admissions are not used as intended, and when a party uses deemed admissions to try to preclude presentation of the merits of a case.” (internal quotation marks and citation omitted)). **Therefore, overly broad, merits-preclusive requests for admissions are improper and may not result in deemed admissions.** See *In re Estate of Herring*, 970 S.W.2d 583, 589 (Tex. App.—Corpus Christi 1998, no pet.) (holding that admissions requesting party to “admit [wife] did not transfer community property ... without your knowledge and consent” and “admit you have not been injured in any manner as a direct result of the alleged acts” were sweepingly broad and not deemed admitted); *Birido*, 842 S.W.2d at 701 (holding that request is improper and will not be deemed admitted where party requests that opposing party admit or deny every allegation made in petition); *Powell v. City of McKinney*, 711 S.W.2d 69, 71 (Tex. App.—Dallas 1986, no writ) (holding that request asking plaintiffs to “admit [they] no longer wish to pursue their cause of action in the above styled and numbered cause” was sweepingly broad and should not be deemed admitted); see also *LRT Record Servs., Inc. v. Archer*, No. 05–00–00324–CV, 2001 WL 221563, \*1, 2001 Tex. App. LEXIS 1447, at \*2–3 (Tex. App.—Dallas Mar. 7, 2001, no pet.) (mem. op.) (“[S]weepingly broad requests for admission may not result in deemed admissions.”).

*Id.* at 803-04 (emphasis added).

Applying these rules to Request for Admission 2, the court of appeals noted that it “is the type of overly broad, merits-preclusive request that other courts have cautioned against.” *Id.* at 804. “This request is akin to a request that Lucas admit all allegations made in the . . . petition, including those regarding damages, as true. Such sweeping requests for admissions cannot be deemed judicial admissions [citation omitted], nor can they provide any evidence to support a trial court’s damage award.” *Id.* The court noted further that “[r]elying on an embedded request for admission that precludes any presentation of evidence on unliquidated damages undermines the spirit of Rule 243 and is not consistent with its purpose. **Requests for admissions were simply not meant to be used in the way that the Appellees have used them here, i.e., to wholly preclude a defendant from presenting his defense.**” *Id.* (emphasis added)

Finally, the court held that the issue of the requests overbreadth had been preserved for appeal even though the defendant had not objected to the requests. *Id.* The court noted that several other courts of appeals had addressed the issue of “sweepingly broad” requests for admissions despite an objection and found that “no objection was necessary to reach the merits of the issue in this Court.” *Id.* at 805. The court found that the question before it was one of the sufficiency of the evidence rather than procedural error and therefore an objection at the trial court was not required for the issue to be heard on appeal. *Id.* The court therefore reversed the trial court’s award of unliquidated damages and remanded the case for further proceedings.

Accordingly, under this authority requests for admissions may not support a judgment if they are internally inconsistent or vague (due to the use of “and/or” requests for example) and overly broad, merits-preclusive requests for admissions are improper and may not result in deemed admissions. Requests for admissions were never intended to be used as a trap for the unwary or as a means of wholly precluding a defendant from presenting a defense on the merits.

#### IV. When Must the Court Permit a Party to Withdraw Deemed Admissions?

If a response to a request for admission is not timely served, then “the request is considered admitted without the necessity of a court order” and any matter so admitted “is conclusively established as to the party making the admission unless the court permits the party to withdraw or amend the admission.” *Tex. R. Civ. P. 198.2(c), 198.3*. See Part I above.

Courts have applied this rule in credit card cases, as in any other case, to grant or uphold a judgment in favor of the plaintiff. See, e.g., *Jones v. Citibank, N.A.*, 235 S.W.3d 333, 336-37 (Tex. App.—Fort Worth 2007, no pet.) (Where pro se defendant timely denied first requests for admissions but was approximately 12 days late in denying second requests, and failed to file a motion to withdraw or amend the admissions, defendant was bound by admissions and could not dispute plaintiff’s proof on liability and damages.); *Rowlands v. Unifund CCR as Assignee of Citibank*, 2007 WL 1395101, at \*4 (Tex. App.—Houston [14th Dist.] March 27, 2007, no pet.) (Deemed admissions supported summary judgment where defendant moved to “undeem” the admissions but the trial court failed to rule on that motion and the issue was therefore not preserved on appeal.); *Sanchez v. Bank of America, N.A.*, 2008 WL 2764522, at \*1 (Tex. App.—Corpus Christi July 17, 2008, no pet.) (Where pro se defendant failed to respond to requests for admissions and failed to request withdrawal of the deemed admissions, at trial “the deemed admissions conclusively established that she owed the money in question and the bank’s right to judgment.”).

In *Unifund CCR Partners v. Weaver*, 262 S.W.2d 796 (Tex. 2008), a pro se defendant responded to requests for admissions in a timely manner and both filed his responses with the court and (he alleged) also served them on Unifund’s attorney, as shown by his certificate of service. But Unifund’s attorney claimed in an affidavit that he did not receive the responses and on this basis moved for summary judgment which the trial court granted. Following the entry of judgment Mr. Weaver filed an affidavit stating that he had in fact served the responses on Unifund’s lawyer. The Tenth Court of Appeals reversed on the ground that the responses were on file with the trial court at the time it granted summary judgment. The Supreme Court reversed the court of appeals and rendered judgment for Unifund without oral argument. The Court held that because Mr. Weaver had not responded to Unifund’s motion for summary judgment, he had failed to raise a fact issue in response to Unifund’s allegation that it did not receive a copy of his denials even though they were on file with the trial court. 262 S.W.3d at 798. Although he filed an affidavit stating that he had in fact served the denials on Unifund’s lawyer in support of a post-judgment motion, the Court held that this was too late. *Id.* The Court acknowledged a pro se party’s ability “under special circumstances” to “bring a request to withdraw deemed admissions for the first time in a motion for new trial,” but found that the defendant was on notice that Unifund had not received his denials to the requests for admissions based on Unifund’s motion for summary judgment (even though the denials were on file with the trial court) and he had therefore waived the issue after judgment. *Id.* Finally, the Court found that the substance of the denials, in which the defendant asserted the statute of limitations, was insufficient. *Id.*

Several cases (although not involving credit card debt) stand in contrast to the seemingly harsh result in *Unifund CCR Partners v. Weaver*. In *Wheeler v. Green*, 157 S.W.3d 439, 442-44 (Tex. 2005), the Supreme Court reversed summary judgment based on deemed admissions that a pro se plaintiff had failed to timely answer. The court held that trial courts have broad discretion to permit or deny withdrawal of deemed admissions, but cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles. Further, courts should

allow deemed admissions to be withdrawn if a party can show (1) good cause and (2) no undue prejudice. Good cause “is established by showing the failure involved was an accident or mistake, not intentional or the result of conscious indifference.” *Id.* at 442. A lack of understanding of pretrial procedure by a pro se litigant might be proof of good cause. *Id.* Undue prejudice depends on “whether withdrawing an admission or filing a late response will delay trial or significantly hamper the opposing party’s ability to prepare for it.” *Id.* at 443. Where responses to admissions were filed two days late but six months before a summary judgment hearing, the party serving the requests was not hampered in preparing for trial and the trial court should have allowed the admissions to be withdrawn. *Id.*

In *Marino v. King*, 355 S.W.3d 629 (Tex. 2011), a pro se defendant generally and specifically denied liability but was one day late in serving denials to requests for admissions. The plaintiff moved for summary judgment solely on the basis that the requests were deemed admitted due to the responses being served one day late. The pro se defendant, Ms. Marino, did not file a response to the motion for summary judgment but she did file a motion to dismiss and a motion for mediation and appeared for the summary judgment hearing. The trial court granted the motion for summary judgment because Ms. Marino had not filed a response to the motion for summary judgment or a motion to withdraw the deemed admissions. *Id.* at 632. Ms. Marino then filed a motion for a new trial in which she asked for an opportunity to correct her mistake if she had failed to meet a procedural requirement or needed to supply additional information. *Id.* The motion for new trial was overruled by operation of law. The Tenth Court of Appeals affirmed. 356 S.W.3d 28. The Supreme Court reversed.

Citing *Wheeler v. Green*, *supra*, the Court noted that requests for admissions “are useful when ‘addressing uncontroverted matters or evidentiary ones like the authenticity or admissibility of documents.’” 355 S.W.3d at 632. But the Court noted that King’s requests “asked essentially that Marino admit to the validity of his claims and concede her defenses – matters King knew to be in dispute. Requests for admission were never intended for this purpose.” *Id.* citing *Stelly v. Papania*, 927 S.W.2d 620, 622 (Tex. 1966) (per curiam) (quoting *Sanders v. Harder*, 227 S.W.2d 206, 208 (Tex. 1950) (stating that requests for admission were “never intended to be used as a demand upon a plaintiff or defendant to admit that he had no cause of action or ground of defense.”). The Court held:

As we have previously observed, requests for admissions should be used “as a tool, not a trapdoor.” *U.S. Fid. Guar. Co. v. Goudeau*, 272 S.W.3d 603, 610 (Tex. 2008). And when admissions are deemed as a discovery sanction to preclude a presentation of the merits, they implicate the same due process concerns as other case-ending discovery sanctions. *Wheeler*, 157 S.W.3d at 443 . . . . Thus, in *Wheeler* we required a showing of “flagrant bad faith or callous disregard for the rules” to substantiate a summary judgment based solely on deemed admissions. *See id.* at 443 (noting that “absent flagrant bad faith or callous disregard for the rules, due process bars merits-preclusive sanctions.”).

355 S.W.3d at 632-33. The Court held that the facts in *Marino v. King* were indistinguishable from those in *Wheeler v. Green* and that the trial court therefore should have allowed the deemed admissions to be withdrawn:

Although trial courts have broad discretion to permit or deny the withdrawal of deemed admissions, they cannot do so arbitrarily, unreasonably, or without reference to guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985). The due process concern recognized in *Wheeler* is one such principle that inheres to a request for merits-preclusive admissions. *See In re Rozelle*, 229 S.W.3d 757, 763 (Tex. App.—San Antonio 2007) (quoting *Wheeler* and observing that this due process concern is a “guiding rule and principle that applies ‘[w]hen requests for admissions are [not] used as intended,’ and ‘when a party uses deemed admissions to try to preclude presentation of the merits of a case.’”). Constitutional imperatives favor the determination of cases on their merits rather than on harmless procedural defaults. Using deemed admissions as the basis for summary judgment therefore does not avoid the requirement of flagrant bad faith or callous disregard, the showing necessary to support a merits-preclusive sanction; it merely incorporates the requirement as an element of the movant’s summary judgment burden. *See Wheeler*, 157 S.W.3d at 443-44.

*Id.* at 633. The Court therefore reversed the court of appeals' judgment and remanded the case to the trial court for further proceedings. *Id.* at 634.

The Ninth Court of Appeals has also applied *Wheeler v. Green* in holding that a pro se party should have been allowed to rectify his mistake and answer requests for admissions in the absence of evidence of flagrant bad faith or callous disregard for the rules. *Thomas v. Select Portfolio Servicing, Inc.*, 2009 WL 2045234 (Tex. App.—Beaumont July 16, 2009, no pet.). The court therefore reversed the trial court's summary judgment based on deemed admissions:

A trial court's discretion is limited by due process. See *Wheeler v. Green*, 157 S.W.3d 439, 443 (Tex. 2005). "When requests for admissions are used as intended – addressing uncontroverted matters or evidentiary ones like the authenticity or admissibility of documents – deeming admissions by default is unlikely to compromise presentation of the merits." *Id.* (citation omitted). Due process concerns arise when a party uses deemed admissions to preclude presentation of the merits of a case. *Id.* Here, the trial court deemed admitted those requests that asked Thomas to agree to the genuineness of certain documents. However, the trial court also deemed admitted such statements as "Defendants have not caused you damages of any kind," "that Defendants owe you no money," "the allegations in your Petition in this lawsuit are not true," and "all causes of action alleged by you against Defendants are unsupported by any admissible evidence." The deemed admissions form the sole ground for Select's and U.S. Bank's motion for summary judgment. . . .

2009 WL 2045234 at \*3.<sup>14</sup> The court held:

The record does not support a finding that Thomas acted in bad faith and with callous disregard for the rules. While the state of mind of a litigant cannot lessen his burden of proof, it does bear upon whether his failure to lodge proper objections to the requests is attributable to bad faith or callous disregard for the rules. . . . Here, as was the case in *Wheeler*, Thomas attempted to rectify his error and respond to all of the requests. [Citation omitted.] **Under the circumstances in this case, the trial court erred in granting summary judgment on deemed admissions without providing Thomas an opportunity to withdraw the deemed admissions and supplement his responses.**

*Id.* (emphasis added). See also *In re American Gunitite Mgmt. Co., Inc.*, 2011 WL 4550159, at \*2 (Tex. App.—Fort Worth Oct. 3, 2011 (no pet.)) (trial court abused its discretion by denying motion to set aside deemed admissions because they were merits-preclusive and the record contained no evidence of flagrant bad faith or callous disregard for the rules).

Although a trial court accordingly has broad discretion in considering a motion to withdraw or amend deemed admissions, due process concerns arise when a party uses deemed admissions to try to preclude the presentation of the merits of a case. In the absence of flagrant bad faith or callous disregard for the rules of civil procedure, a trial court must carefully consider whether good cause and no undue prejudice exist so as to permit the withdrawal of merits-preclusive deemed admissions.

## V. Conclusion

The practice of embedding requests for admissions in a petition is inconsistent with the Texas Rules of Civil Procedure and should be prohibited or discouraged for the reasons discussed in *Hankston v. Equable Ascent Financial*, 382 S.W.3d 631 (Tex. App.—Beaumont 2012, no pet.).

Limits apply to the use of requests for admissions that are contradictory or vague and "overly broad, merits-

preclusive requests for admissions are improper and may not result in deemed admissions.” *Lucas v. Clark*, 347 S.W.3d 800, 804 (Tex. App.—Austin 2011, pet. denied). Requests for admissions were never intended to be used as a trap for the unwary or as a means of wholly precluding a defendant from presenting a defense on the merits. *Id.* at 803.

Although a trial court has broad discretion in considering a motion to withdraw or amend deemed admissions, due process concerns arise when a party uses deemed admissions to try to preclude the presentation of the merits of a case. In the absence of flagrant bad faith or callous disregard for the rules of civil procedure, a trial court must carefully consider whether good cause and no undue prejudice exist so as to permit the withdrawal of merits-preclusive deemed admissions. *Marino v. King*, 355 S.W.3d 629, 632-33 (Tex. 2011).



RANDALL L. SAROSDY

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<sup>1</sup>This is the second in a series of articles about legal issues raised by the plethora of actions filed to collect credit card debt following the recession caused by the collapse of the housing market in 2008. The previous article addressed the business records exception to the hearsay rule. This article addresses the proper use of requests for admissions.

<sup>2</sup>A.B., College of William and Mary, 1974; J.D., University of Texas School of Law, 1977. Mr. Sarosdy practices law in Austin. The opinions expressed in this article are his own and not those of the Texas Center.

<sup>3</sup>Although these issues have arisen in credit card cases because of the extensive reliance on requests for admissions by plaintiffs seeking to collect credit card debt, the conclusions discussed here apply to the use of requests for admissions in any case.

<sup>4</sup>The following exceptions are provided in Rule 191.4(c): the court may order discovery materials to be filed; a person may file discovery materials in support of or in opposition to a motion or for other use in a court proceeding; and a person may file discovery materials necessary for a proceeding in an appellate court.

<sup>5</sup>Whether deemed admissions that were embedded in a petition may be used to establish unliquidated damages is addressed in *Lucas v. Clark*, 2011 WL 2464165 (Tex. App.—Austin Aug. 25, 2011, pet. denied), discussed in Part III below.

<sup>6</sup>The dissent cited *Sherman Acquisition II LP v. Garcia*, 229 S.W.3d 802, 812 (Tex. App.—Waco 2007, no pet.) and *Lee v. Unifund*, 2008 WL 3539938 (Tex. App.—Austin Aug. 15, 2008, no pet.), in saying that “[a]t least two courts of appeals have accepted appellant’s method of obtaining deemed admissions, at least in the absence of a complaint by the defendant.” 2009 WL 2596101 at \*7. But as discussed above the court in *Sherman Acquisition* expressly stated that “by our holding we express no opinion on the propriety of this form of request for admissions or its service.” 229 S.W.3d at 812. Likewise, in *Lee v. Unifund*, the court expressly stated that it was not deciding whether or not embedding requests for admissions in a petition violates the Texas Rules of Civil Procedure. 2008 WL 3539938 at \*2 n.1.

<sup>7</sup>These requests for admissions were filed in support of a motion for summary judgment in *Bluebonnet Financial Assets v. Goines*, Cause No. JC56606, Justice Court, Precinct 1, Place 1, Wichita County (July 23, 2008).

<sup>8</sup>These requests for admissions were embedded in the Petition filed in *LVNV Funding LLC v. Mogg*, in Cause No. 15388J1, in Justice Court, Precinct 1, Hale County (Nov. 12, 2007).

<sup>9</sup>These requests for admissions were served with the petition in *Hudson & Keyse, LLC as Assignee of Bank of America, N.A. v. Skindzier*, No. 2008-0007-CV, in Justice Court, Precinct 3, Place 1, Medina County (Feb. 4, 2008).

<sup>10</sup>These requests for admissions were embedded in the petition in Cause No. 09-15166, filed in Justice Court, Precinct 1, Place 1, Angelina County (Aug. 10, 2009).

<sup>11</sup>What the plaintiff must prove depends on whether the damages are considered liquidated or unliquidated. Compare *Oliphant Financial, LLC v. Patton*, 2010 WL 936688 at \*5 (Tex. App.—Dallas March 17, 2010, pet. filed) (plaintiff failed to prove damages were liquidated) with *Oliphant Financial, LLC v. Galaviz*, 299 SW2d 829, 837-38 (Tex. App.—Dallas 2009, no pet.) (damages were liquidated) and *Bluebonnet Financial Assoc. v. Miller*, 324 S.W.3d 603, 612 (Tex. App.—El Paso 2010, no pet.) (damages were liquidated).

<sup>12</sup>Admission 11 admitted that Luke “presently owes” \$23,596.60 but Admission 12 indicated that Luke owed \$22,938.87. Admission 17 admitted that Luke never requested verification of the debt prior to the filing of the suit but Admission 28 admitted that if Luke requested verification then Unifund verified the debt prior to filing suit. Admission 14 stated that Luke owes \$23,596.60 but the trial court awarded \$22,938.87.

<sup>13</sup>*Lucas* asserted that he was never served with the citation and filed a bill of review in the district court. *Id.* at 802 n.4.

<sup>14</sup>Compare these requests to those commonly used in credit card cases as quoted in Part III above.



## Tablet Tips for Judges: *Working Smarter not Harder*

Author's Note: After I submitted this article for publication, but before it went to press, I learned some additional information. There is a concern about how secure Dropbox may be. Therefore, I want to make you aware of two other similar apps that function the same way, but have greater security. "Box" and "Skydrive" function just like "Dropbox" (and actually provide more initial free space). However, they each have a greater degree of security. I plan on continuing to use Dropbox for blank forms and other similar information. However, for the more sensitive case specific material, I will be making the shift to either Skydrive or Box. As you begin to explore this new approach, all you need to do is substitute either "Box" or "Skydrive" for every place in the article where I mentioned "Dropbox".

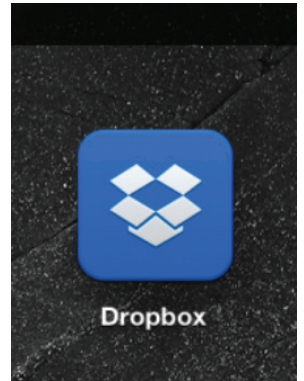
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*by* SCOTT J. BECKER, JUDGE 219TH DISTRICT COURT, COLLIN COUNTY, TEXAS

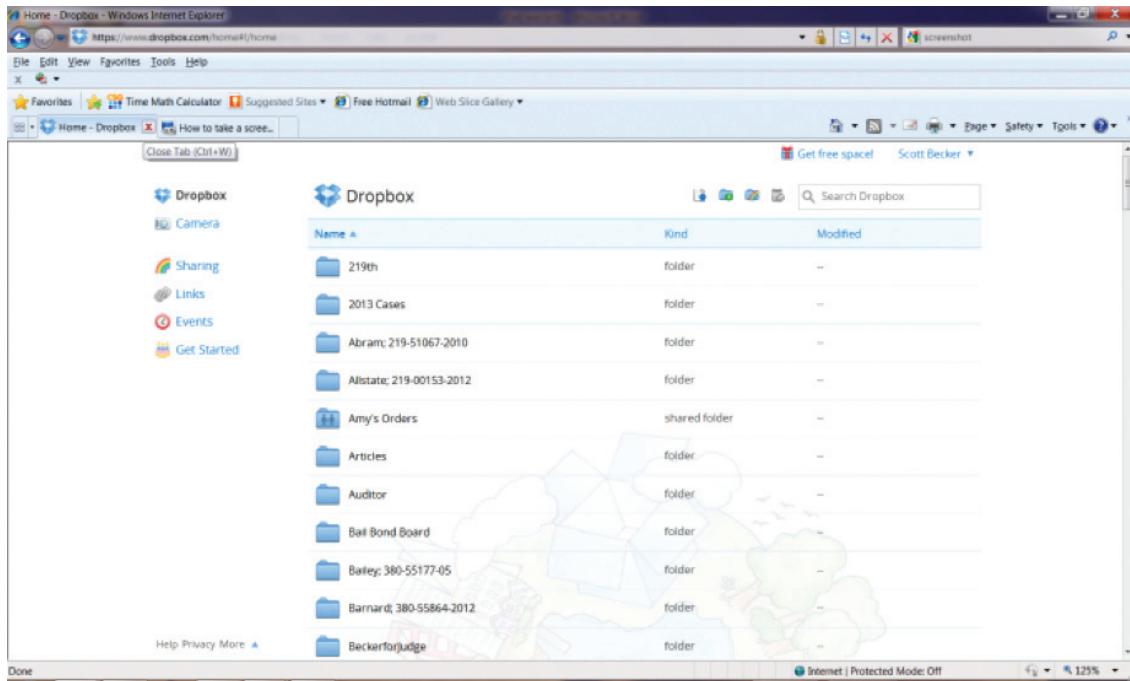
I admit I am a "Star Wars" nerd of the highest order. I know far more about the trivia of those movies than any grown man should admit. While the days of holograms in the courtroom are not quite here, there are some other technological advances that might be useful to you on the bench. I have come across a new paperless method for reviewing and signing warrants. This new method involves an iPad, Dropbox, and Notes Plus.<sup>1</sup> There are several steps in this process which I will walk you through in this article.

## Step 1: Download Dropbox

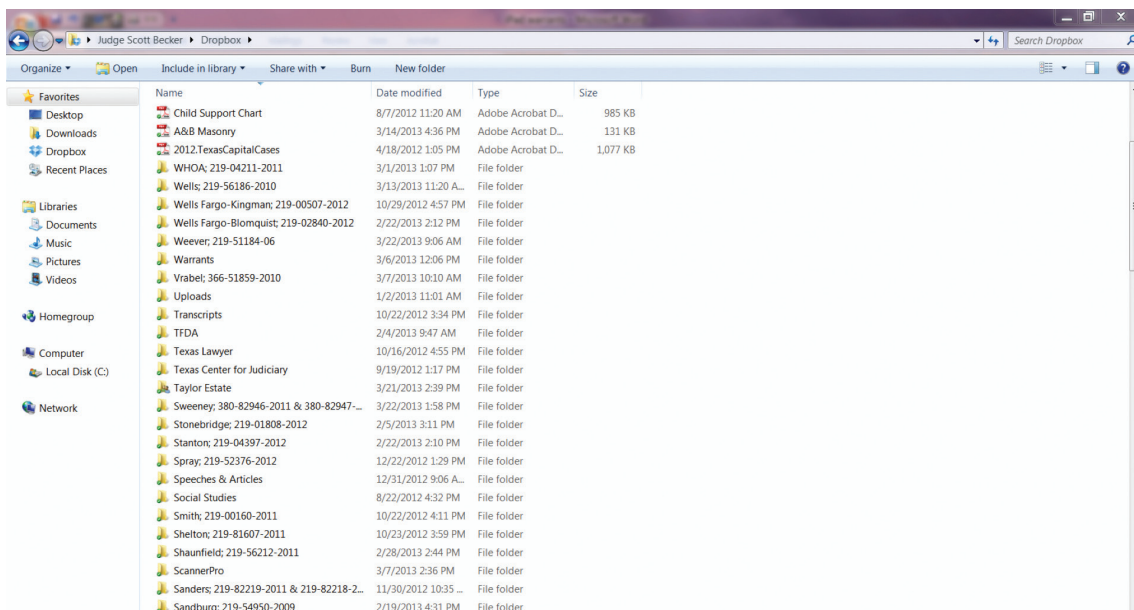
First, you'll need an iPad or similar tablet device. On that iPad you will need to have loaded the software app called Dropbox.<sup>2</sup> The icon for the app looks like this on the right. Think of this program as your own personal computer server. It's free for the first 2.5 gigabytes of space. This is a ridiculous amount of free space and should be more than sufficient to handle the process described in this article. Basically, Dropbox is a program that allows you to store any type of computer file you would like into various folders that you create. These folders and their contents are then viewable on any computer from which you log into the Dropbox program. You can log in via the internet and view it over the web, or load the program onto your computer and view items through the program in Windows. If Dropbox is loaded on your iPad, you can view its contents there as well. The images below show you what Dropbox looks like from each of the aforementioned methods.

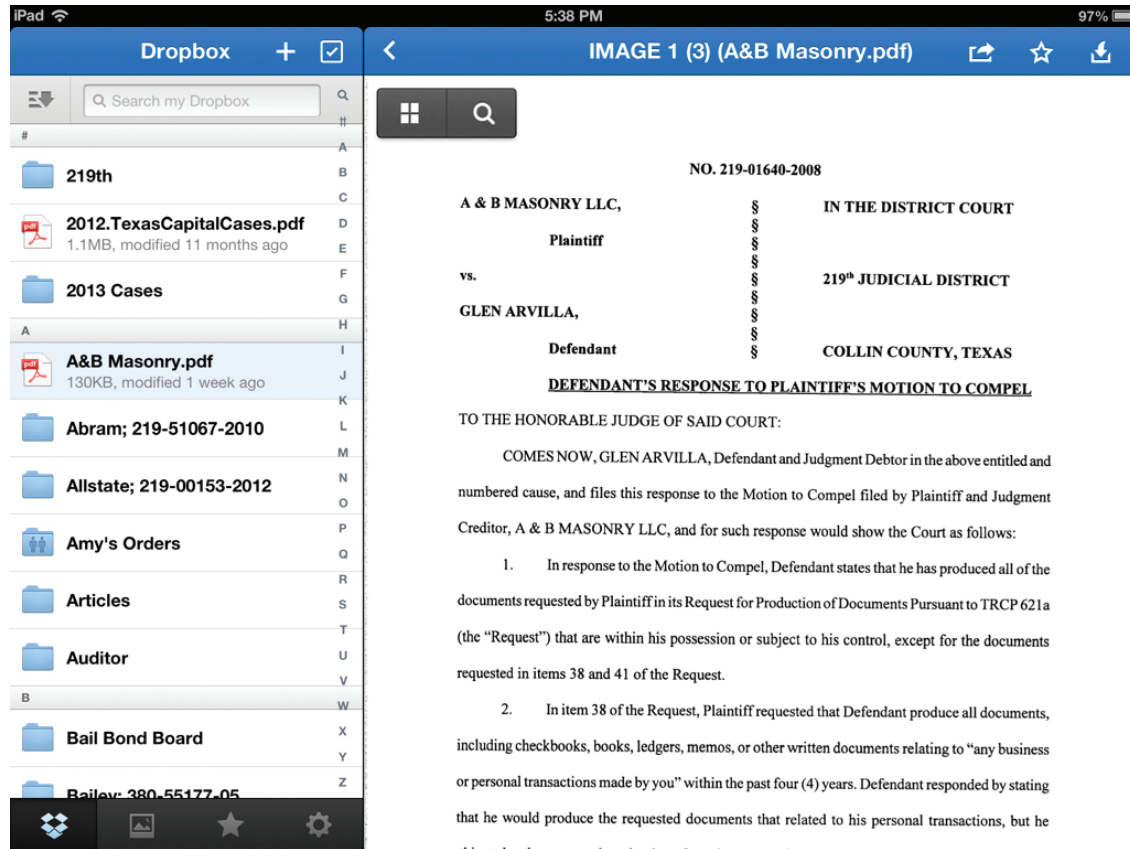


## Internet View



## Computer view through Dropbox software

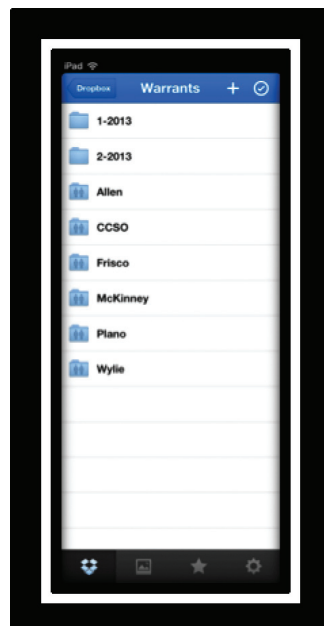




### Step 2: Set up a Shared Folder

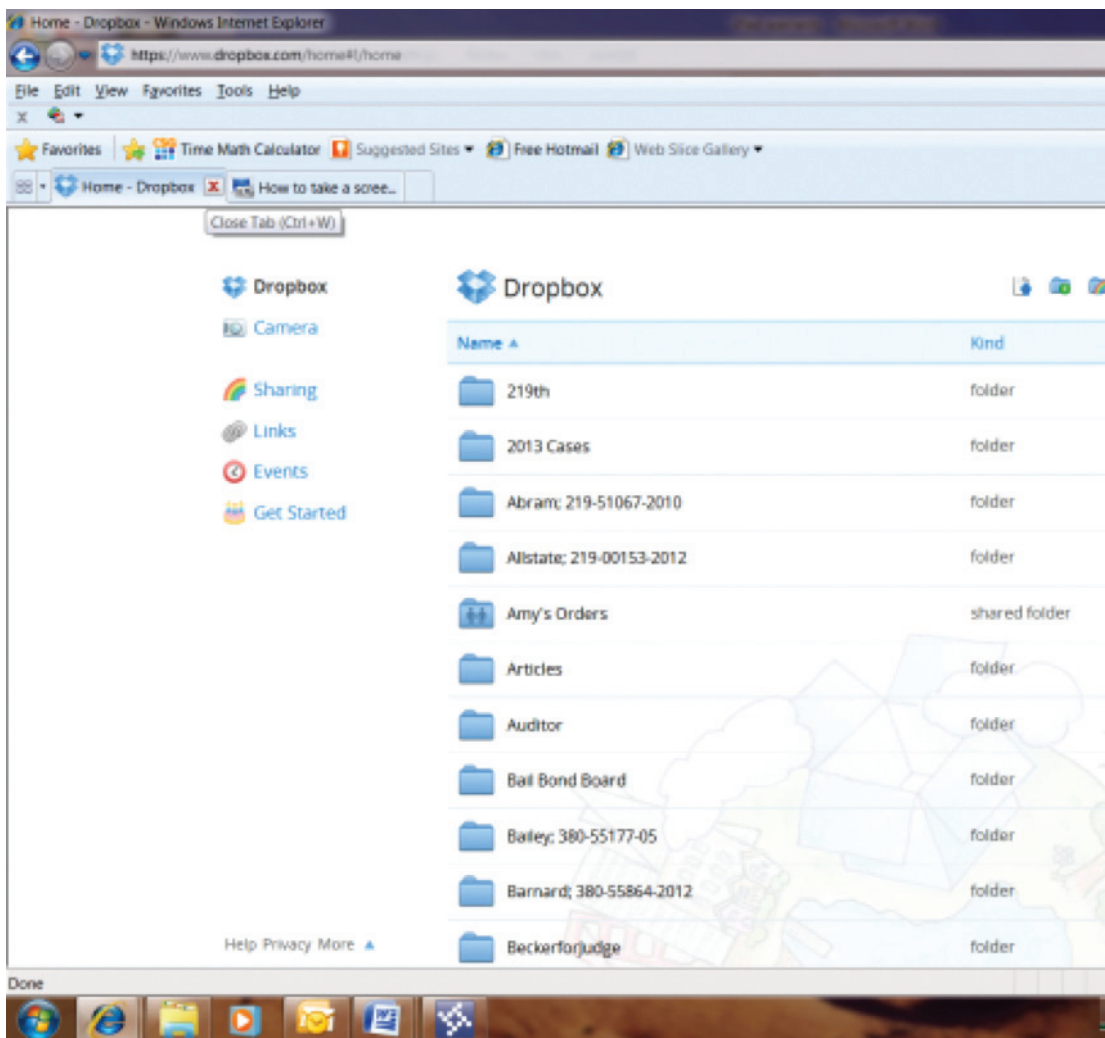
Second, once you have loaded Dropbox onto your computer and your iPad, you'll need to establish a "shared" folder. This is exactly what it sounds like. You can create a folder that you and whoever you choose can both see. The people you share with will also have to be Dropbox users. This may seem like a pyramid scheme but have no fear. There is no cost for them to join if they are not already a member. Additionally, if they join in response to your invitation, you get an additional 500 MB of space. For warrants, I set up a shared folder with each law enforcement agency that has said they are willing to use this process.<sup>3</sup>

My shared folders look like this:



### Step 3: Establishing a Shared Folder

You'll need to access Dropbox from the internet. That will look like this below:

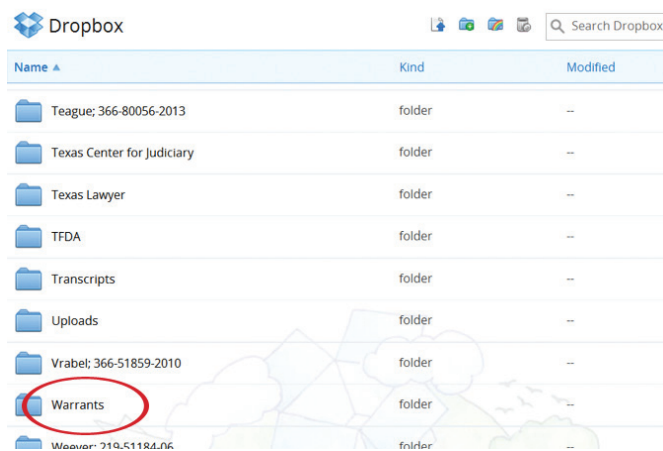


The screenshot above is from my Dropbox account which I have been using for several months, therefore you can see I have already set up numerous folders. Your account will not look like this at first. You will want set up a folder called “Warrants.”

Within each agency folder there are two folders “To Be Signed” and “Signed”. When an officer needs a warrant, he calls or texts my cell phone. If I am available, I let him know and we move on to the next step; he then places the warrant and accompanying affidavit into the appropriate “To Be Signed” folder for his agency.

### Step 4: Reviewing the Warrant

Once the documents are in Dropbox, I can read the affidavit and warrant and make sure they are in proper order. You can do that by reading the document in the viewing window of Dropbox. If it is a multi page document, you simply scroll down like you have with any other document on the iPad. The touch screen allows you to do this without using a scroll bar.



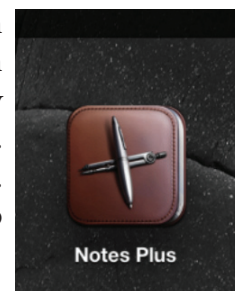
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## Step 5: Opening Warrant in a Signature App

Assuming the warrant and affidavit are in order and establish probable cause, you can move to the next step by opening them in a signature app. Here the officer has two options. Option one is to swear out the affidavit in front of a notary or other officer. They can then scan that sworn/signed affidavit into Dropbox and I can review to make sure the affiant's signature is in order. Option two is for the officer to swear to the affidavit while I watch him sign it through FaceTime or Skype.

I did not include these two apps in the requirements because technically you can complete the process without these two programs. It just requires the officer to swear to the affidavit in front of a notary or other officer. However I recognize sometimes officers swear to the affidavit in front of the judge. Recent case law has indicated that officers known to the judge by voice can swear to an affidavit over the telephone.<sup>4</sup> As this is okay by sound alone, my conclusion is that clearly video confirmation would pass muster. Of course if there are any appellate judge reading this article and I am wrong, please let me know.

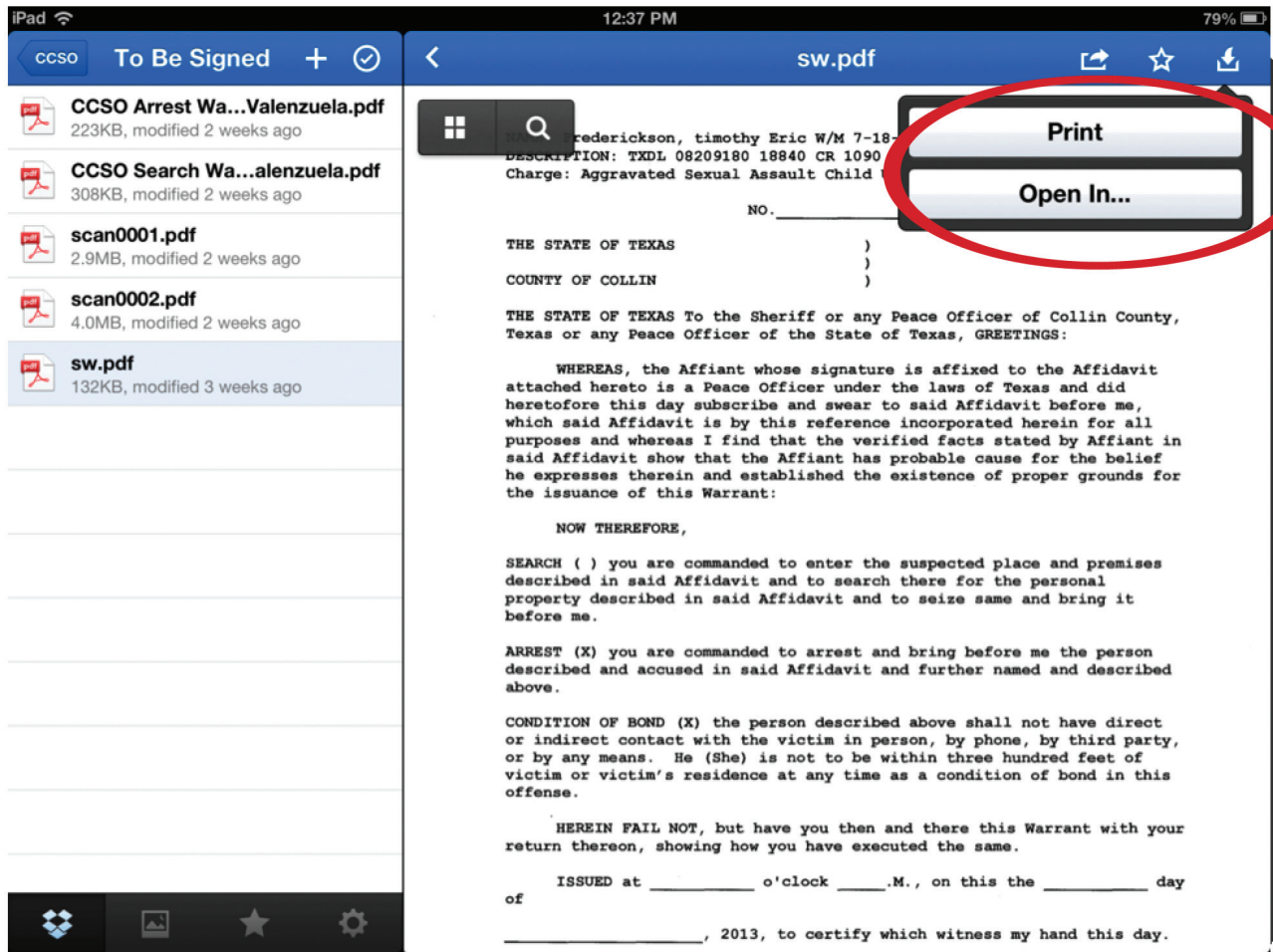
If everything is in order, then you can open the warrant into NotesPlus<sup>5</sup> on your iPad. That icon looks like this. This app allows you to write as if you were using a pen and paper. Therefore, you can sign the warrant with your own original signature. Although you can write with your finger on an iPad, I don't recommend it. I recommend using a stylus.<sup>6</sup> They are available at any office supply store for only a few bucks. It's a lot harder to sign with just your finger than you might think. After using a pen or pencil since kindergarten, our hands are not used to writing without them. Your signature may look sloppy and unnatural. Of course if you are okay with that it's up to you.



You open up the document from Dropbox into another app like Notes Plus by tapping on few symbols within the Dropbox view screen. Look in the upper right hand corner of the window for the curved arrow circled in red below:



When you tap on that arrow a menu should open up and look like this:



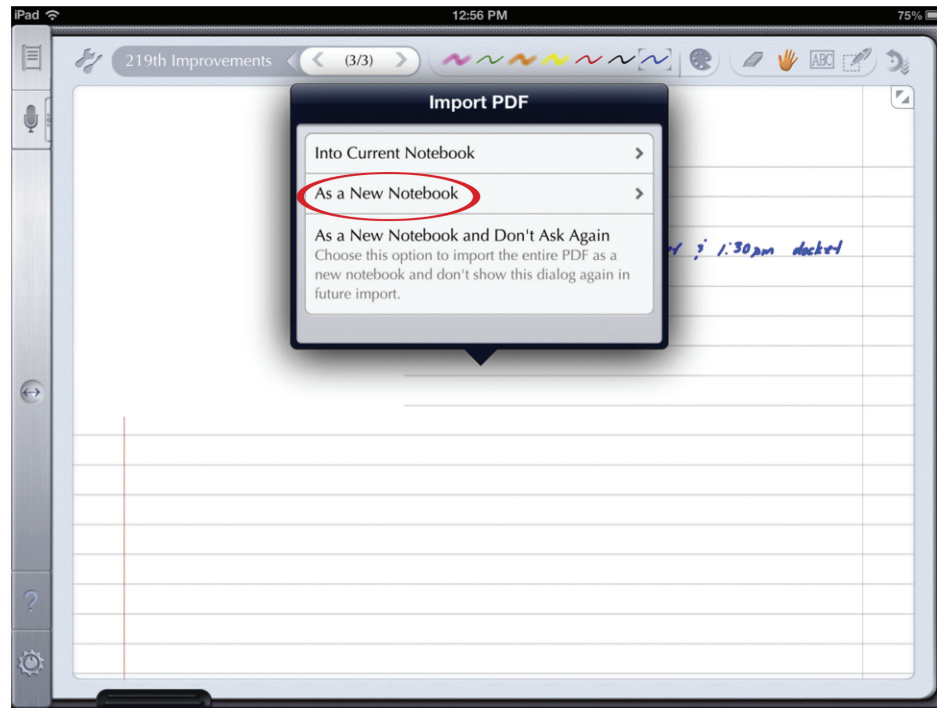
You'll want to tap the option that says "Open In...". When you do, your screen should look something like this:



# FEATURES

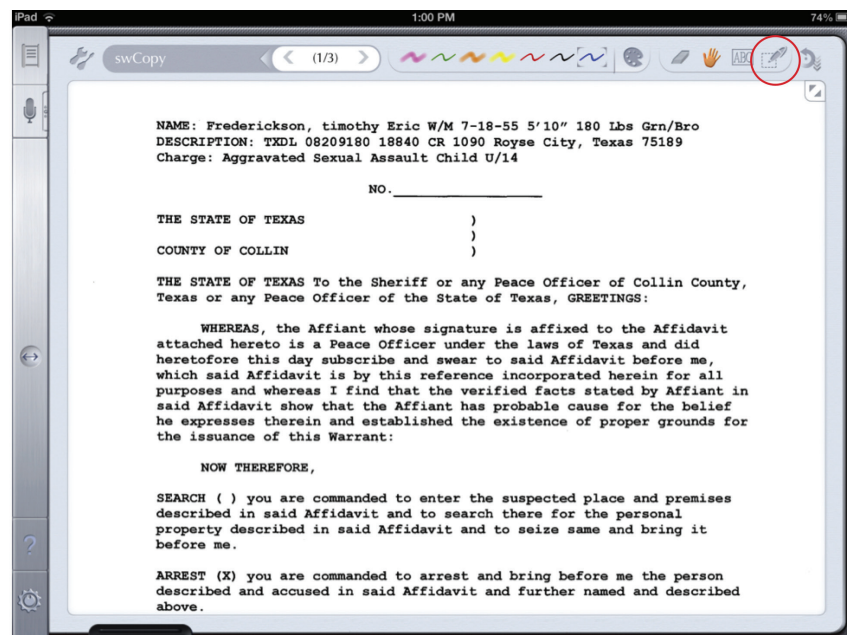
The icons you have in your menu may change depending on what's loaded on your iPad. All of these shown in this menu are designed to read the file you wish to open. Just tap on the icon representing the app you wish to use. For the next step in the signature process, you will want to use NotesPlus (however, both GoodReader and PDF Expert will also work).

Once you tap “NotesPlus” your screen should look like this:

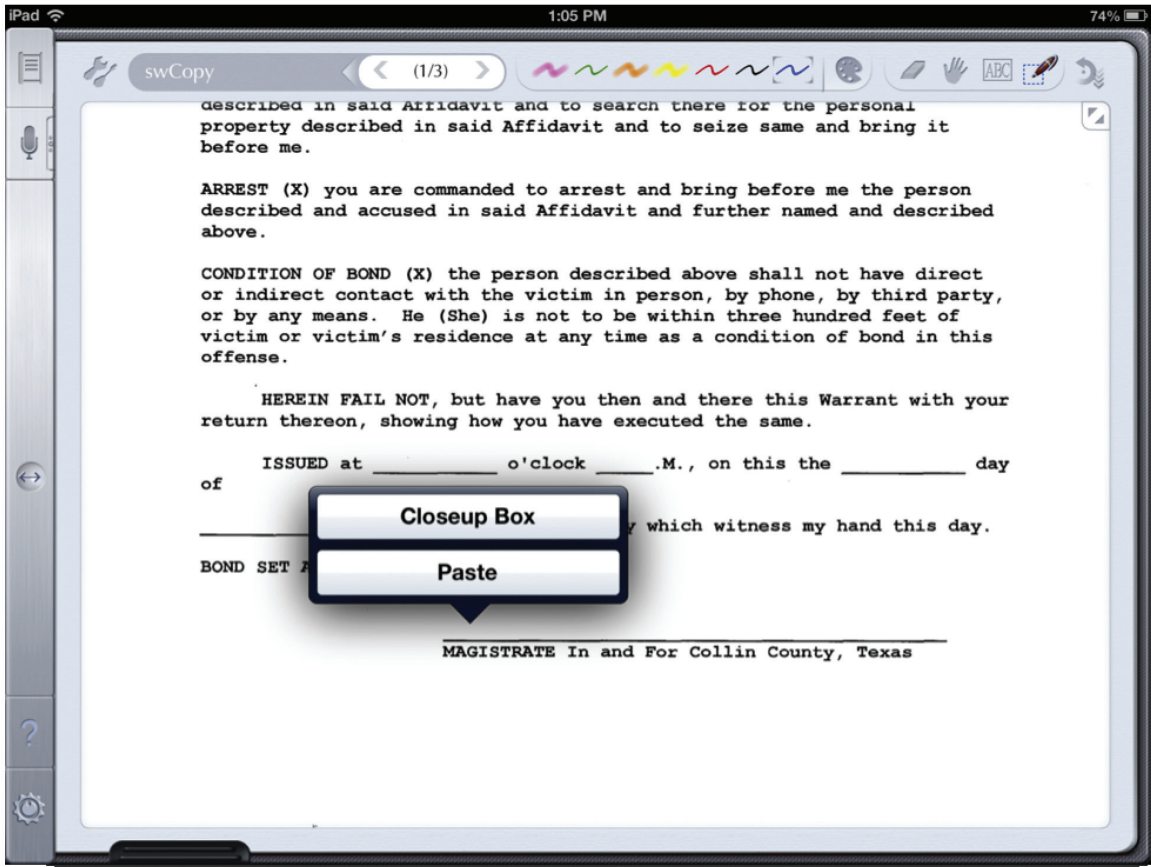


You'll want to tap “As a New Notebook” and then your screen will change to what you see next:

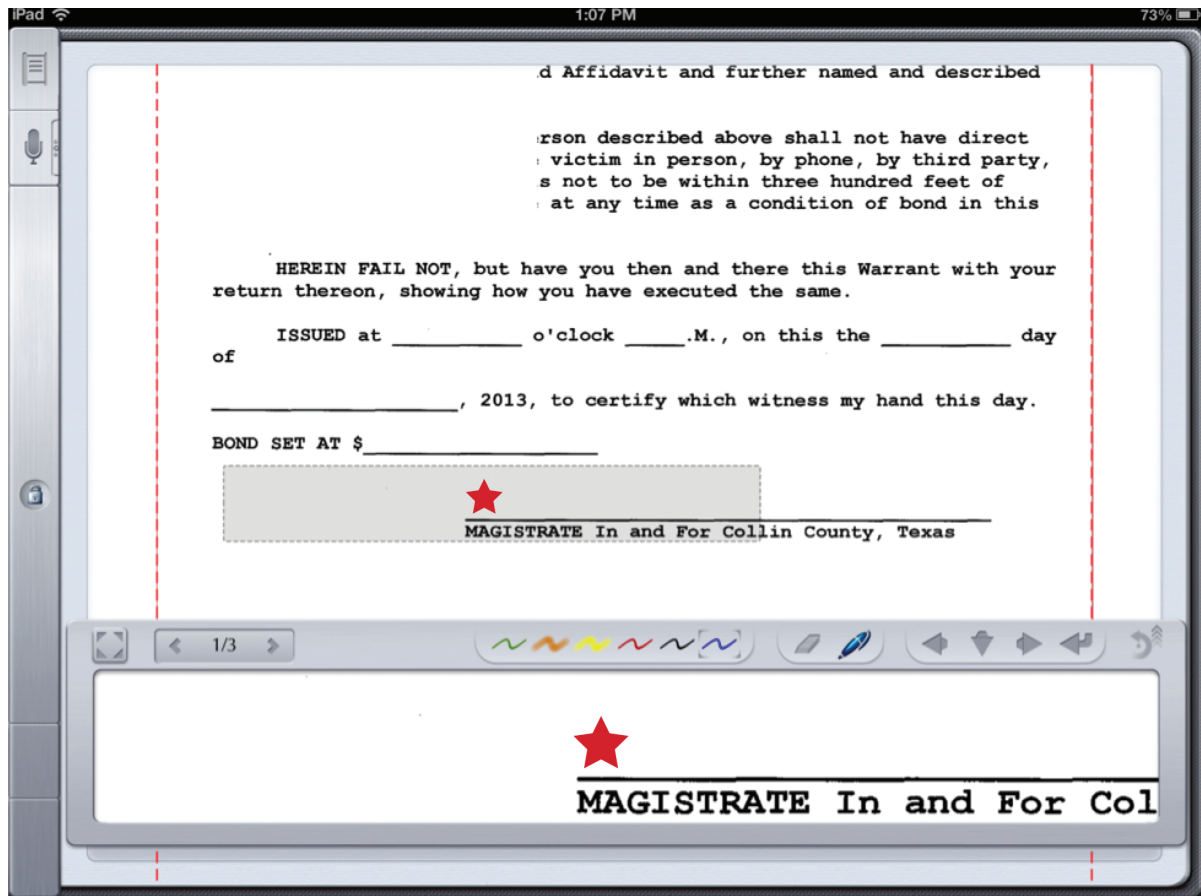
## Step 6: Signing the Warrant



You'll need to tap your stylus onto the pen icon above (circled). Once you've done that hold your stylus on the area of the document you wish to sign. Your screen will then look like this below:



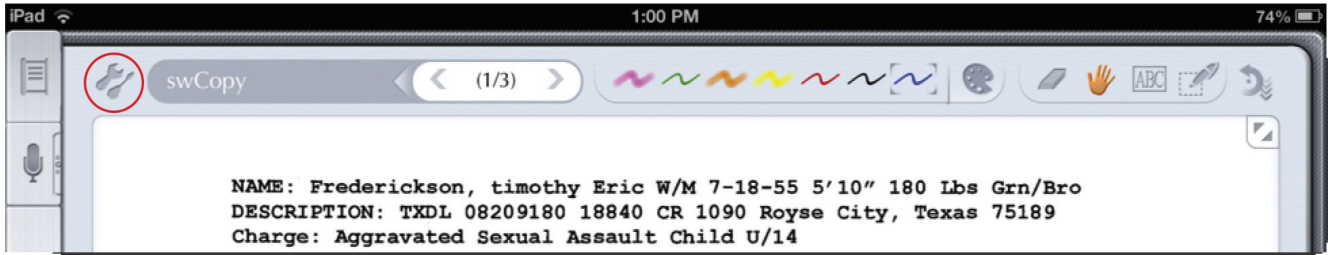
You then tap "Closeup Box" and a dotted line rectangle appears as shown next:



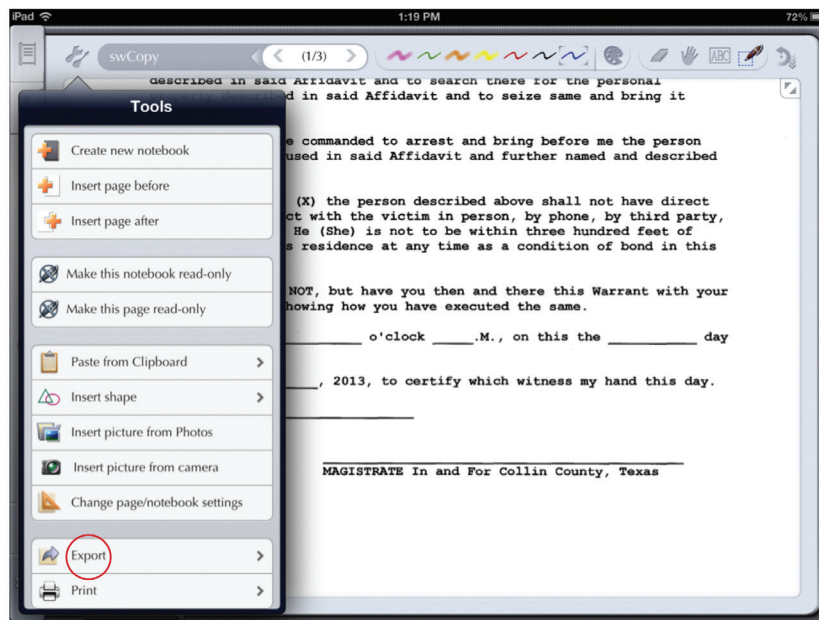
At this point the rectangle is showing you where your writing will appear. You simply sign your name (see large star) and your signature will appear here (see smaller star).

## Step 7: Getting the Signed Warrant back to the Officer

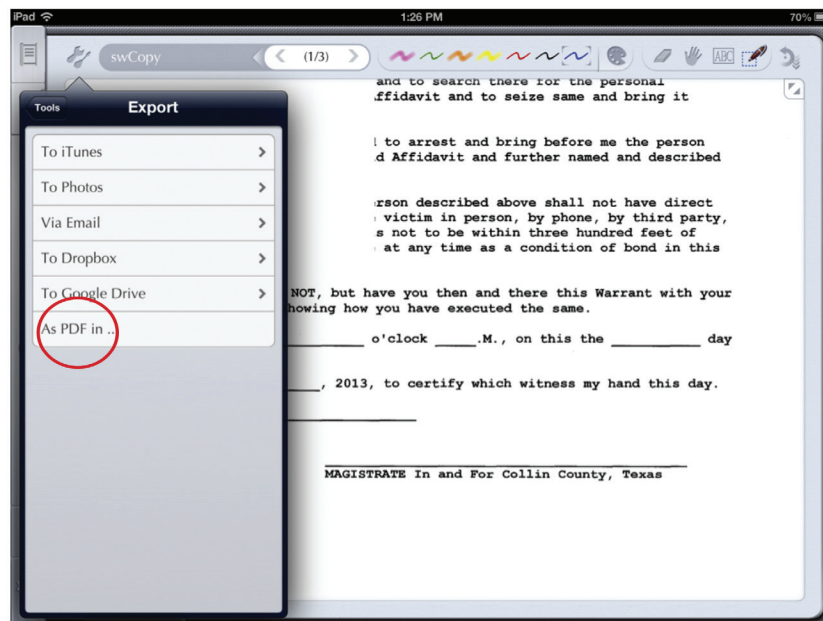
Once, you have signed it, you export the document back into Dropbox as a PDF in the “Signed” folder. You do so by tapping anywhere on the screen to close the “Closeup Box”. Your screen at the top should then look like this again:



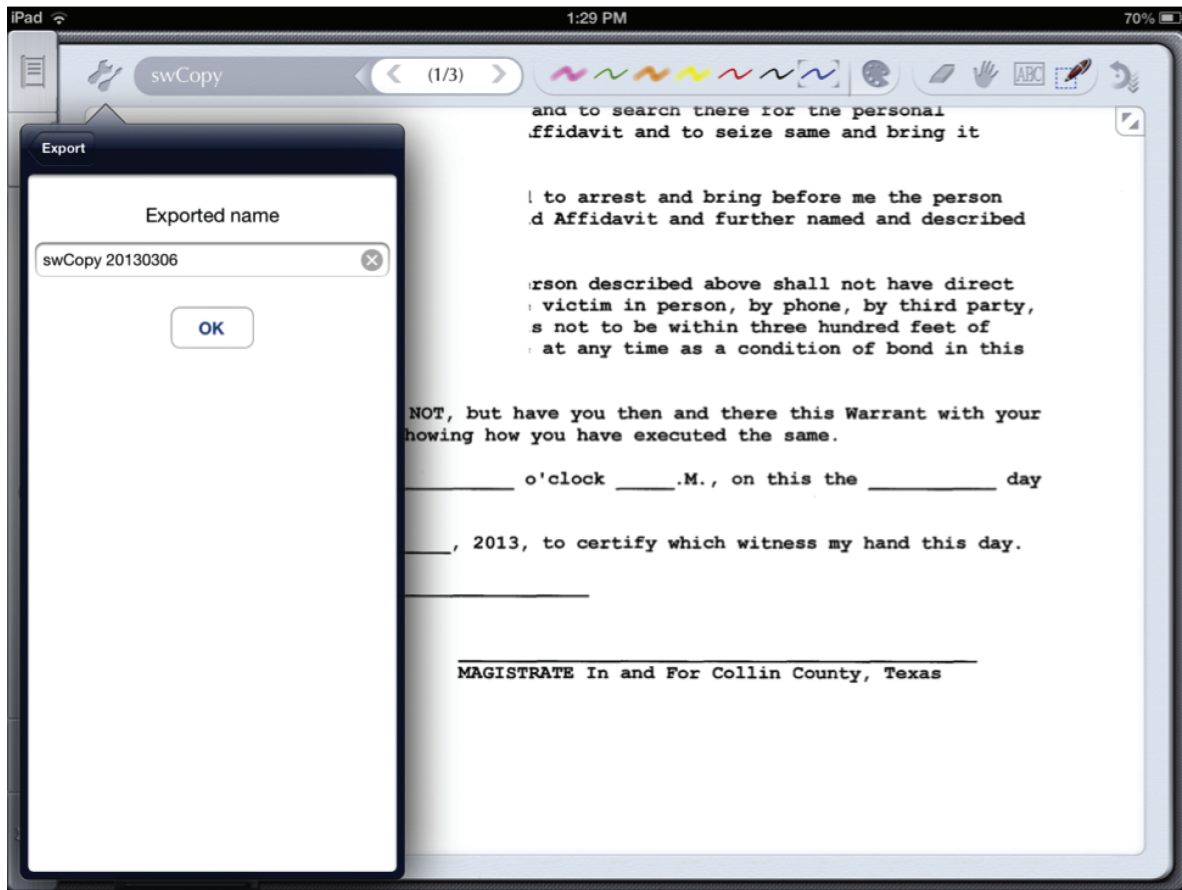
You'll need to tap the wrench and screwdriver icon (circled) and your screen will drop down a menu that looks like this:



You tap “Export” (circled) and your screen will open a submenu like this:

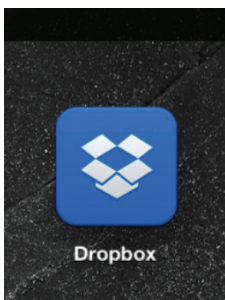


You then tap “As PDF in ...” (circled) and your screen will open another menu to look like this:



You can choose whatever filename you wish to give the file here. Tap “OK” and this menu will appear again.

Except it will appear on the left hand side of your screen instead.



One of the options will include Dropbox. Tap that icon.



The officer should be able to see that on his computer at the other end. However, if he cannot, you can call or text them to let them know. The officer then opens the signed warrant and prints it out on their printer.

As you can imagine this process is not limited to just warrants. I have set up a shared folder with my court coordinator as well. When I am away from the office at a seminar, I can still sign orders if necessary. She simply scans the original order into the “To Be Signed” folder for “Orders”. I then open it up on my iPad in NotesPlus, sign it and export it back for her to print at the office no matter where I am.<sup>7</sup>

This process may seem a little awkward at first. However, it really is quite easy once you do it a few times. It reduces paper, and increases my availability and productivity. I hope you find it helpful. Feel free to contact

## FEATURES

me (sbecker@co.collin.tx.us) if you need someone to walk you through the set up and test it out with your court staff before contacting law enforcement about it. Good luck and may the Force be with you!

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<sup>1</sup>I'm not trying to shill for Apple or any of the other software designers. I'm sure the method I describe will work on other platforms. These just happen to be the programs I use and am most comfortable describing.

<sup>2</sup>Loading this app is just like any other from the App Store. If you are familiar with loading other apps to your tablet, loading Dropbox will be a snap. If you are not familiar with downloading apps to your tablet, find your nearest 12 year old relative and they should be able to help you out. If you can't find one of them, call me and I'll be happy to walk you through the process.

<sup>3</sup>Every agency I have worked with has jumped at the chance to use this process because it cuts down on travel time for the officers. Please note the set up is that each agency can only see the contents of its own folder. No one agency can see inside any other agency's folder.

<sup>4</sup>*Aylor v. State*, No. 12-09-00460-CR, 2011 WL 1659887 (Tex. App.—Tyler Apr. 29, 2011), *abrogated by* *Clay v. State*, 391 S.W. 3d 94 (Tex. Crim. App. 2013).



*Hon. Scott J. Becker*

<sup>5</sup>This app should be downloaded before you start this process. It actually costs about \$6.00. There is the ability to purchase a feature form inside the app that allows you to convert your handwriting to typed text. It costs \$1.00. However, I recommend against this extra purchase. This is because you need to write neatly enough for the app to be able to accurately convert your handwriting to type. If you are writing that neatly, the conversion is usually unnecessary.

<sup>6</sup>My favorite stylus is made by Boxwave. Most styli have rubber tips that can occasionally skip on the screen surface and the writing looks a little rough. The Boxwave has a cloth tip allowing for smoother writing and no skipping.

<sup>7</sup>Technically I am limited by having an iPad that only works with wifi. However, wifi is so prevalent this is not really a limitation.

# Things Judges Wish They'd Known Before Learning Them the Hard Way

There are many things judges have learned from experience, which they wished they had known about earlier in their careers – things they had to learn the hard way – through unfortunate experience. When I sat as a visiting judge around the state, I often saw little yellow sticky notes, on the insides of their Benches, with reminders written on them – “Remember to listen,” “Beware of cell-phone cameras,” “Remind court staff that those are my left-overs in the fridge.” This article contains lists of things Texas judges wished they had known, without having had to learn them by experience.

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by HON. MARK ATKINSON, WITH CONTRIBUTIONS BY FELLOW TEXAS JUDGES

I was sitting at home perusing the internet in an effort to be distracted from “Dancing with the Stars – The Early Years” when I stumbled on a health-related article entitled “Five Things to Know about your Brain.” I did not spend much time on it, but found, at the end of the article, more health-related lists – “Ten Benefits of Chia Seeds,” “Seven dangers of Juicing,” and more. I found myself drawn to them like a moth to a flame.

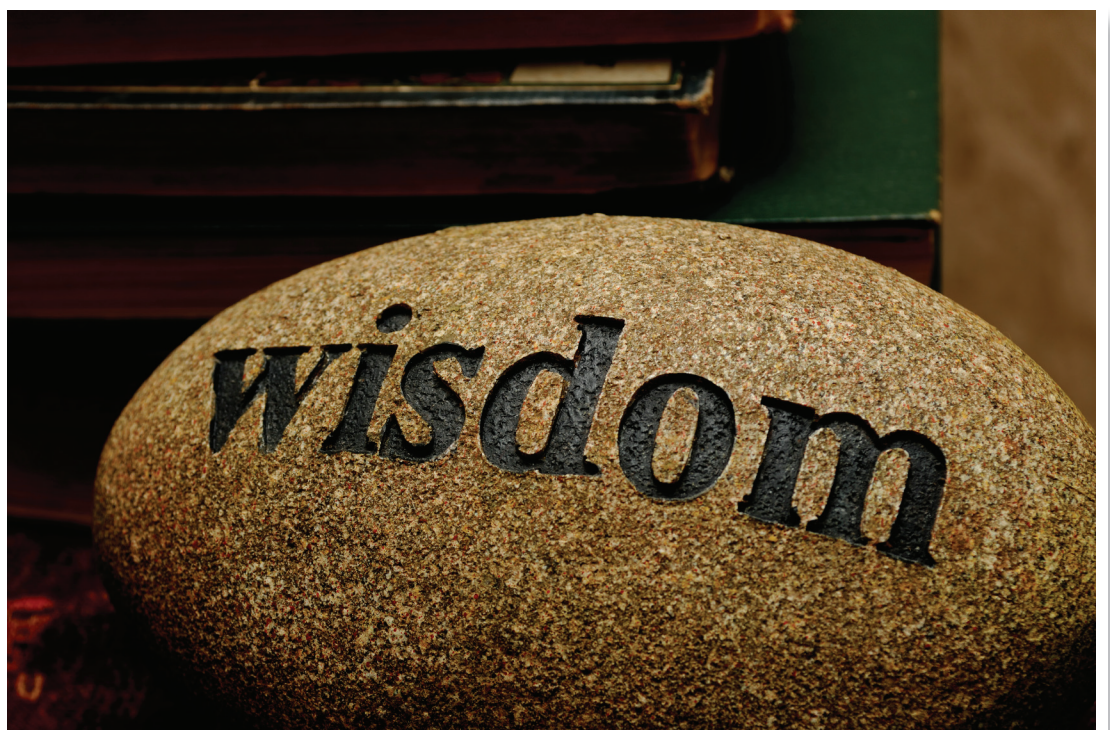
I went to my favorite search engine and entered the search words, “Things I wish I’d learned earlier...” Hundreds of results appeared, from “56 Things I wish I’d known about Love” to “Ten Things I wish they’d told me before I Joined the Circus.” I could not stop myself from reading them, one after another. I got little sleep that night, dreaming in list form.

The next morning, I was sternly reminded by TCJ Program Attorney, Courtney, that I was late in providing her with an article for *In Chambers*. I admit that the look she gave me unnerved me a bit, and I got to working. It occurred to me that there had to be things judges learned from experience, which they wished they had known about earlier in their

careers – things they had to learn the hard way – through unfortunate experience. I knew I, after 24 years, had a bucket of them.

I knew that our judges accumulated wisdom here and there, which they tried to keep in mind while performing their daily duties. When I sat as a visiting judge around the state, I often saw little yellow sticky notes, on the insides of their Benches, with reminders written on them – “Remember to listen,” “Beware of cell-phone cameras,” “Remind court staff that those are my left-overs in the fridge.”

I asked judges to compile lists of things they wished they had known, without having had to learn them by experience. I compiled a list myself, as an example of what I had in mind, which was as follows:



# FEATURES

- 1 Listen, and let folks be heard fully, even if you are pretty sure you know everything they are going to say -- and how you feel about it.
- 2 Don't start the morning with the most contentious people or issues.
- 3 When an attorney or a party tries to get you to engage in verbal combat, don't take the bait.
- 4 Give everyone a lunch break around noon.
- 5 End the trial day at 5:00 PM.
- 6 Don't hold a lawyer in contempt unless the conduct is so bad it rises to the level of a State Bar grievance.
- 7 Say less, rather than more.

So, I came up with seven -- I was planning on ten, but Courtney walked by my office door, gave me another look and kept walking. Threw me off my game.

Still, I was ready to pitch this to my colleagues to see what they could come up with. To quote the Kinky-Friedman-for-Governor bumper sticker, "How hard could it be?"

Here are some contributions from judges, who for the most part, wanted to remain anonymous:

## Three Things from a Retired Hill Country Judge

### 1. Court Reporters are Sensitive Too

When you resume trial after a break, it is important to see if you have a reporter. It is hard to convince your reporter how important she is after you have been listening to a witness for five minutes and didn't notice she was absent. I thought the juror needed to go to the bathroom when she was really pointing to the empty reporter's chair.

### 2. "Sure I know Judge So-and-So..."

Never allow the attorney's to ask questions of the jury venire regarding their relationship with you, the Judge. You may have heard a joke or two about such questions. THEY ARE NOT JOKES!!

### 3. "I couldn't tell who it was, the windows were fogged."

Give great consideration to Judge vanity plates. If you decide to use them be sure and talk to your family about their impact. Trust me, when your High School

son borrows your car and goes "parking" at the lake at midnight, it takes months to squelch the rumors.

## One Thing from a West Texas Judge

I learned the hard way that a judge must follow the law, even if it doesn't make sense and goes against your sense of what should have been the result. I was proud of myself for making two decisions early in my judicial career that clearly to me were what should have been the fair and just results. I applied the law in a way that justified what I wanted the result to be as opposed to what the law intended. I was reversed in both cases. Follow the law.

## One Thing from a Central Texas Judge

I wish I had known that that "innocent" order I was asked to sign wasn't so innocent.

## Seven Things from a Retired Central Texas Judge

1. Be very cautious about taking too many cases under advisement. Your first instinct is probably right, and when are you going to have time to read the briefs again and do your own independent research?

2. Make your decision based on what you believe is right, and let the appeals courts worry about the rest.

3. Give everyone his or her day in court, even if you already know what you are going to do.

4. Just when you quit focusing on the trial proceedings is invariably when an objection will be made.

5. When #4 happens, it is probably best to swallow your pride and request that the question be asked again (or read back) rather than guessing.
6. Your patience WILL be tested. Have an arsenal of tools thought through in advance for how to deal with this.
7. You are not smarter than everybody else in the courtroom.

### One Thing from a Retired Northeast Texas Judge

I wish I had learned how to deal with the press and resulting political problems. (We did not have the Texas College for New Judges in those days.)

### Five Things from a Retired South Texas Judge

1. Do not let the sun set on making a decision -- the case will never look better and your memory will never be clearer than it is immediately after the case concludes.
2. Lawyers cannot correctly estimate the time needed for a hearing, trial etc... Triple their estimates.
3. Jury rooms are small -- do not leave jurors in there unless it is absolutely necessary.
4. Make eye contact with defendants. That way when they approach you at the grocery store and ask if you remember them, you can reply, "Do you go to my church?"
5. Treat your court reporter well -- they have control over the transcripts of your trials!

As these were being composed and sent to us, I sat down one more time and tried my hand at composing a list of helpful items, this time a list of things NOT to do. I may have delved a little too deeply into my own painful past, but here they are:

1. Don't ask about a female defendant's pregnancy, even if your female bailiff tells you the defendant has been smoking marijuana while pregnant -- especially when the defendant is not pregnant.
2. Don't permit your bailiff to test a TASER to see if the voltage will penetrate the sole of his boot, especially in the courtroom.
3. Don't suggest to a young defendant that the next time he comes to court, he should dress like he's going to his grandmother's funeral, and have the confused young

man leave thinking you've suggested his grandmother is about to die.

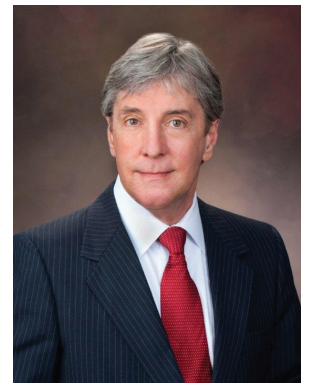
4. Don't allow an accused prostitute to address you, "OK, Hon," even if the sign in front of your Bench does say, "Hon. So-and-So."
5. Don't tell a young male defendant that earrings are for women and pirates, only to have the next lawyer at the Bench comment that he'll be sure not to wear his around you.
6. Don't indignantly ask a defendant with massive tattoos on his neck what sort of career he expects to successfully pursue, and be surprised to hear him respond, "Body-artist."
7. Don't have a robe so long that you trip on it going down the steps while leaving the Bench, crashing into the closed exit door and crumpling into a heap in front of a courtroom of spectators.
8. Don't bob your tea bag up and down in your teacup while on the Bench, only to be told by observers that no one can see the string from a distance, and it just looks like you're crazy.
9. Don't, after falling into a habit of being chronically late, chastise, in your gruffest Wizard of Oz manner, a defendant, for being late for 9:00 docket call, and be surprised to have him respond, "Well, I've been coming here a few times already, and it seems like nothing really gets going on till around 9:30."
10. Don't ask a young female defendant what a nice young girl like her is doing in jail, only to be informed later by staff that you were talking to a male.

### *And, please:*

1. Don't allow your bailiff to return a sleeping inmate, with a broken leg, in a county wheel-chair, to the jail, by a route via a long down-ramp, without first making sure that the handle grips won't come off in the bailiff's hands.

If this advice helps just one judge to maintain that high standard of judicial integrity and dignity we expect of ourselves, this article will have been worth it.

*Written by Hon. Mark Atkinson  
Executive Director, Texas Center for the Judiciary*



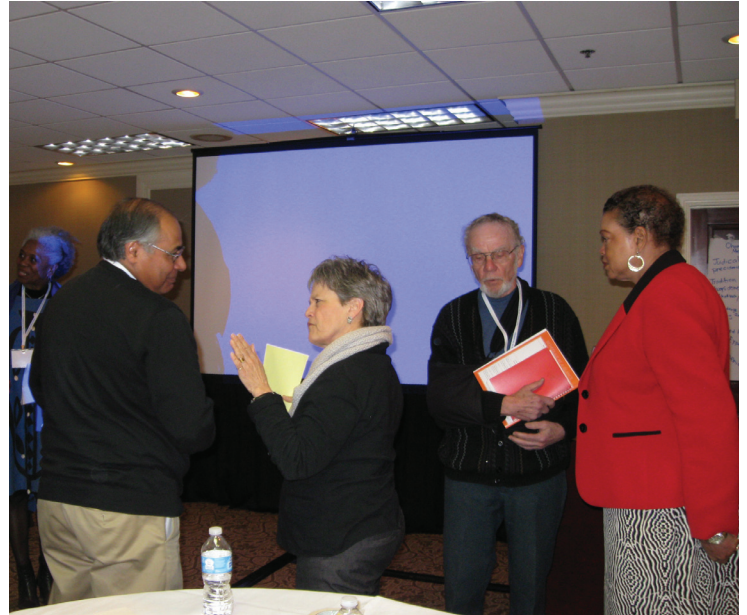
# {photo lineup}

from 2012 & 2013 conferences

*\*for more photos see the online  
version of the issue*



*IMPLICIT BIAS*



San Antonio //  
March 25-26, 2013



*PERMANENCY SUMMIT*



Rockwall // October 7-10, 2012



# {photo lineup}

## 2012 COLLEGE FOR NEW JUDGES



Austin //  
December 2-7, 2012



## 2013 FAMILY VIOLENCE CONFERENCE



Galveston // March 7-8, 2013

## *awards & honors*

### Judge Maria Salas-Mendoza Receives Las Americas' Border Hero Award

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Below is an excerpt article taken from the Las Americas Winter 2012 Newsletter.<sup>1</sup>

On Saturday October 20, 2012 at 6 pm in the evening, Las Americas Immigrant Advocacy Center celebrated its 2012 Border Heroes with a gala dinner catered by The Basil Garden, entertainment provided by Ricardo Valencia, and a thought provoking address by keynote speaker Rev. Alexia Salvatierra of the Evangelical Lutheran Church of America. This year's Border Heroes are the Honorable Maria Salas Mendoza and Mr. West Paul Cosgrove.

Judge Salas Mendoza is the president of the El Paso Bar Association, works with disadvantaged

youth to inspire them to achieve beyond their wildest dreams, and dedicates herself to the El Paso Women's Bar Association. She seems to be a woman who just can't say no, but in the very best sense. She is always willing to help others out.

Las Americas is a 25 year-old, homegrown, non-profit dedicated to serving the legal needs of low income immigrants, including refugees and battered women. Its lawyers and staff are committed to providing high quality legal representation to those who otherwise would not be able to afford it. Las Americas believes that the American Dream should not be for sale but should be accessible to all deserving people, regardless of their countries of origin and their financial situation. Since 1987, Las Americas, which is certified by the Board of Immigration Appeals, has provided representation to more than 9,000 low-income immigrants in El Paso.

<sup>1</sup>Border Heroes Dinner 2012, Winter 2012 Newsletter (Las Americas, El Paso, TX), November 6, 2012.

### Congratulations to the Graduates of the 2012 College for New Judges!

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On December 2, 2012, newly elected and appointed Texas judges began a six-day, intensive education



and training program sponsored by the Texas Center. All the judges came eager to learn, discuss, and analyze the issues most important to the judiciary. The College provides invaluable information and training in support of a successful transition from an advocate to that of a fair and impartial judge. We would like to extend warm congratulations to the 77 appellate, district, county court at law, and associate judges who graduated this year!

## *awards & honors*

Special thanks goes to the College's co-deans, Judge Lora Livingston and Judge Kathleen Hamilton, whose countless hours planning, organizing, and teaching ensured that this year's College was a resounding success. Our faculty likewise did an outstanding job in making sure the topics covered were relevant, substantive and well-presented. And the judges who served as group discussion leaders provided a unique opportunity for the new judges to participate in small discussion groups to address best practices, common problems, issues and concerns and to have a sounding board and an advisor and mentor. This year's discussion group leaders were Judge Stephen Ables, Judge Linda Chew, Judge Paul Davis, Judge David Garcia, Judge Kathleen Hamilton, Justice Mackey Hancock, Judge Brenda Kennedy, Judge David Peebles, Judge Dean Rucker and Judge Laura Weiser.

The Texas Center is proud to continue the tradition of outstanding judicial education represented by this year's College for New Judges. This education is made possible by the dedication and commitment of experienced, knowledgeable and very able judges who volunteer their time and energy for the benefit of the Texas judiciary as a whole.

## The State Bar of Texas Awards Outstanding Jurist to Justice Tracy Christopher

Each year, the Texas Bar Foundation honors those who exemplify the highest standards of the legal profession. In March, the Texas Bar Foundation announced that Justice Tracy Christopher will receive the 2013 Samuel Pessarra Outstanding Jurist Award.

Justice Tracy Christopher was appointed to the 14th Court of Appeals in December 2009. Prior to her appointment, Justice Christopher was the judge of the 295th District Court for 15 years, and was highly rated as a trial judge. She was honored as Trial Judge of the Year by the Texas Association of Civil Trial and Appellate Specialists. She previously worked as an attorney for Susman Godfrey and Vinson & Elkins. Justice Christopher is the author of numerous CLE articles. Justice Christopher is Board Certified in Civil Trial Law and Personal Injury Law. She is currently a member of the Supreme Court Advisory Committee. The members are appointed by the Texas Supreme Court and the committee studies the Rules of Civil Procedure, the Rules of Evidence and the Rules of Appellate Procedure and proposes changes to improve them. She is also currently the chair of the Pattern Jury Charge Oversight Committee. The chair is appointed by the President of the State Bar of Texas and the committee studies the instructions given to a jury in trial. Justice Christopher received her BA with honors from the University of Notre Dame and her JD with honors from the University of Texas School of Law.



In 1987, the Texas Bar Foundation created the Outstanding Jurist Award to honor an active Federal or State Judge. Retired judges or judges of senior status are eligible if they continue to be active on the bench. In 1995, the Foundation received a bequest to the endowment from the estate of Mrs. Samuel Pessarra in honor of her late husband for the purpose of funding the Outstanding Jurist Award. The recipient must have served on the bench for a minimum of 10 years and exhibit an exceptionally outstanding reputation for competency, efficiency, and integrity.

Justice Christopher will be recognized at the 2013 Annual Dinner on June 21 in Dallas.

## *awards & honors*

### Justice Sue Walker is a Texas Tech Distinguished Alumni Award Winner

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Justice Sue Walker has another honor to add to her mantle: Distinguished Alumni of Texas Tech University School of Law. This honor will join The Texas Chapters of the American Board of Trial Advocates' "Jurist of the Year" award (2012) and the "Judge Charles J. Murray Outstanding Jurist" award (2010). The distinguished alumni awards are given to "recognize professional and personal commitment to excellence, and contributions to the law school and legal community."<sup>1</sup>

Justice Walker was elected to serve on the Second Court of Appeals in 2001. For the past twenty years, she has been Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization. Prior to commencing her judicial service, Justice Walker was a solo practitioner practicing civil and criminal appellate law. She is a former adjunct professor of law at Texas Wesleyan School of Law where she taught Criminal Appellate Procedure. In her early legal career, Justice Walker served as a briefing attorney and a staff attorney at the

Fifth District Court of Appeals. Justice Walker obtained her undergraduate degree with high honors from the University of Texas in Austin.

Justice Walker currently serves on the Civil Appellate Board Certification Exam Commission. She previously served as President, Counselor, and Treasurer of the Eldon B. Mahon Inn of Court. In recognition of Justice Walker's long and meritorious service to the Inns of Court and to the legal profession, in 2009 the Eldon B. Mahon Inn of Court elected her to membership in the Serjeant's Inn of the Dallas and Fort Worth Inns of Court. Justice Walker is a National Science and Resource Judge; she was elected a Fellow in 2009 by the Advanced Science & Technology Resource Center in Washington, D.C. She served on the Texas Supreme Court Task Force to Ensure Judicial Readiness in Times of Emergency. She has served on the Board of Directors of the Tarrant County Bar Association and as Second Vice President. Justice Walker has also held the office of Secretary and Vice Chair of the Appellate Section of the Tarrant County Bar Association.

Justice Walker is a member of the American Law Institute. She is also a Fellow in the Texas Bar Foundation. She is a member of the Appellate Practice and Advocacy Section of the State Bar of Texas, a member of the Appellate Section of the Tarrant County Bar Association, a member of the College of the State Bar of Texas, a Charter and Sustaining Fellow of the Tarrant County Bar Foundation, and an Emeritus member of the Eldon B. Mahon Chapter of the American Inns of Court.

<sup>1</sup>Tech Alumni Honored During Annual Law School Gala, LUBBOCK AVALANCHE-JOURNAL, Mar. 6, 2013, available at <http://lubbockonline.com/filed-online/2013-03-06/tech-alumni-honored-during-annual-law-school-gala#.UXXbw7XkvWI>

## *awards & honors*



### Tarrant County Trial Lawyers Association Honor District Court Judge Tom Lowe

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The Honorable Tom Lowe of the 236<sup>th</sup> Civil District Court was recently selected as the Tarrant County Trial Lawyers Association's outstanding jurist. The Charles J. Murray Outstanding Jurist Award is presented annually to a deserving federal or state judge who has served on the bench for a significant period of time and has exhibited an exceptionally outstanding reputation for competency, efficiency and integrity. The award is to be presented in memory of Charles J Murray, who was a distinguished Texas trial judge, recipient of the Texas Bar Foundation's Outstanding Jurist Award in 1988, and who exemplified through his actions and character the highest standards of judicial competency, efficiency, and integrity.

The award was presented to Judge Lowe by the President of the Association, Mark Haney. Below is an excerpt from Mr. Haney's speech:

[Judge Lowe] is a man with a tender heart...He is a man who has never lost sight of who he is and who he serves...He is a man who has always seemed to understand that he is a judge who presides over cases that involve people, just like him, and that everyone

## *awards & honors*

deserves to be treated with kindness and dignity...He has recognized the changes in our legal system that have been imposed over the past years making it ever more difficult to serve the needs of the injured in our community.

Let me tell you that in preparation for tonight I had the chance to talk with this year's recipient. One of the things I had the chance to ask him was for him to tell me of his greatest achievements...[L]et me tell you what he told me about what he considered his greatest achievement. "I have tried to the best of my ability to be the kind of judge I had always wanted to appear before when I was in private practice. A judge who is considerate of the law, takes his responsibilities very seriously, but not himself. A judge who welcomes performing the duties of a judge and having the responsibilities which go with being a judge. A judge who tried to treat every lawyer and every party with fairness, and respect and who never lost or forgot where he came from or the difficulties and burdens of the attorneys and parties before him. I have tried to never forget how important each dispute is to the parties themselves, and I have tried to use the powers afforded me as a judge with fairness, sober reflection, thoughtfulness, and restraint."

Pat Gallagher, a board member of the Association, agrees with Mr. Haney's praise of Judge Lowe. Mr. Gallagher stated "If I had to pick one word to summarize Judge Lowe's attributes on the bench, I would say 'courage.' It takes a lot of courage to rule for people who are not the well-represented and well-financed corporate interests. It takes a lot of courage to rule against healthcare corporations who are trying to conceal information after they have grievously injured infants. It takes a lot of courage to rule against powerful political interests. And he has done that, even if that is not popular with the powers that be. So I would say that Judge Lowe has a lot of courage in the rulings he has made, which were correct rulings under the law, and those rulings have benefited people who were not the corporate interests. Those rulings took a lot of courage."

Judge Lowe received his B.A. from Texas Christian University in 1973 where he served as Student Body President. He then went on to obtain a J.D. from The University of Texas in 1977. Right out of law school, he was a solo practitioner in Fort Worth for 17 years, never working for another lawyer or firm. Judge Lowe was elected to the 236th Civil District Court in 1994. He has been reelected 4 times and is seeking reelection in 2014. Judge Lowe was Board Certified in Family Law 1984 and Civil Trial Law 1992. He is a single father of an 8 year old son with severe autism, Thomas Wilson Lowe IV whom he adores.



# SUPPORT

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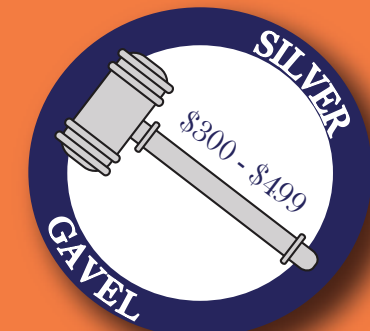
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## JUDICIARY

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# Advisory Opinion Summaries

## October 23, 2012 – April 30, 2013

### Texas Ethics Commission

EAO No. 506 (2012) – A refrigerator magnet on which a public officer's name, photograph public office, and contact information appear, as well as a list of items promoting that officer's priorities, is considered "political advertising" for the purposes of Section 255.003 of the Election Code. Therefore, public funds may not be used to pay for the magnets.

EAO No. 507 (2012) – A former TxDOT employee may perform services on behalf of a private employer regarding a general engineering consultant contract to oversee a design-build contract if the services do not include a review or analysis of any highway design and construction provisions that are essential components of the design-build contract in which he was involved.

EAO No. 508 (2012) – The laws under the Ethics Commission's jurisdiction would not prohibit a legislator from solely receiving compensation from the organization under the stated facts, provided that the compensation reflects the actual value of the legislator's services and not because of his status as a public servant; the services are provided in a capacity other than as a public servant and as long as the legislator's official position is not a reason for his employment by the organization; the compensation is not received in exchange for an official act as a public servant; and the compensation is neither a prohibited political contribution nor a gift, loan, or other prohibited expenditure by a registered lobbyist. A legislator should understand that the solicitation of contributions to an organization for which the legislator serves as executive director and from which the legislator receives compensation for services could be viewed as improper under certain circumstances. Accordingly, a legislator should use extreme caution when soliciting such contributions.

EAO No. 509 (2013) – A parent for-profit corporation that assists a general-purpose committee under section 253.100(a) may solicit political contributions to the committee from the employees of a subsidiary for-profit corporation that it wholly owns and operates.

EAO No. 510 (2013) – A general-purpose committee may accept political contributions by text message if

if the committee's campaign treasurer is able to obtain the contributor information necessary to comply with the reporting requirements of Title 15 of the Election Code. A general-purpose committee would not be prohibited from accepting certain factored payments described in this opinion from a connection aggregator if the terms of the factoring agreement between the aggregator and the political committee reflect the usual and normal practice of the industry and are typical of the terms of agreements offered by the aggregator to other political and non-political customers

EAO No. 511 (2013) – Merely accepting a person's signature on a petition for a place on the ballot during the period in which the candidate is prohibited from accepting political contributions is not prohibited by the Judicial Campaign Fairness Act.

These summaries have been taken directly from the TEC's website. To see summaries from previous years, please visit: <http://www.ethics.state.tx.us/legal/AT-eaosquery.html>.

Judicial Section of the State Bar of Texas Committee on Judicial Ethics

Opinion No. 296 (2013) – It is inconsistent with Canons 6D(2), 2A, 2B, 4A and 4D(1) for a part-time family law associate judge, appointed by a court, to represent clients before any court of the county in which he or she is appointed and before courts in the counties surrounding the county in which he or she is appointed, provided that those courts are "subject to the appellate jurisdiction of the court which he or she serves".

State Commission on Judicial Conduct

No. PS-2013-1 (04/29/13) – [I]t is the Commission's position that the part-time magistrates in Bexar County are permitted under the Code to represent criminal defendants, other than those they have magistrated, in the Bexar County courts. None of the matters before the Bexar County magistrate judges are referred to them by the district judges; the part-time magistrate judges are performing functions in matters before the jurisdiction of the district court attaches; the duties and authority of the magistrate judges, which are found in the Texas Code of Criminal Procedure, are wholly independent and distinct from those pertinent to the District Courts or the County Courts; the magistrate judges cannot rule on the merits of any matter before

them other than to determine if probable cause exists to arrest and confine an individual; and without the necessity of a referral, magistrate judges can issue search warrants, arrest warrants, and protective orders, none of which constitute a final adjudication of any aspect of the case.

American Bar Association's Judicial Ethics Opinion  
There was a Formal Opinion issued by the American Bar Association entitled "Judge's Use of Electronic Social Networking Media." *Formal Opinion 462* (February 21, 2013). While the opinion notes that social media can be beneficial for judges, it also examines the proper extent to which a judge should engage in social networking. In summary, the Formal Opinion advises:

#### *Potential Pitfalls of Judges' Use Electronic Social Media ("EMS")*

- Judges should be mindful of the easy dissemination of comments and images beyond the intended recipients when it comes to EMS.
- Any comments, photos, and messages published using EMS can be found years, even decades, later.
- Judges' use of EMS is governed by the principles that they must act in a manner that promotes public confidence and avoids impropriety and the appearance of impropriety. Essentially, judges must always be careful of how their relationships on EMS can be seen by the public, no matter how innocent and proper they in fact are.

#### *Judges' Use of Electronic Social Media for Recreation*

- Judges should not post comments, share photos, or engage in activities using ESM that could undermine public confidence in the judiciary.
- Judges should not form ESM relationships with individuals or organizations that may convey an impression of impropriety.
- Judges should avoid making comments, using photos or sending messages through ESM regarding matters before their court that can be construed as ex parte communication. "Indeed, a judge should avoid comment about a pending or impending matter in any court...and take care not to offer legal advice..." *Id* (emphasis added).
- Judges with EMS connections with lawyers or parties before their court should examine whether disclosure is required for purposes of disqualification. In making this determination, a judge should analyze: (1) the context of the

relationship; (2) the frequency of communication via EMS; and (3) how the relationship would be viewed if it were a personal or professional relationship. If the judge believes the relationship is relevant and should be considered, he or she should state it on record. However, after disclosing the relationship, the judge can also aver that he or she believes the relationship does not require disqualification.

#### *Judges' Use of Electronic Social Media for Campaigning*

- Websites and EMS can be established and maintained by campaign committees, so long as they are not established or maintained by the judge or judicial candidate personally.
- When visiting others' political campaign EMS sites, a judge should not use "like" labels or anything indicating approval of shared messages, photos, and other content because it can be construed as endorsing or opposing another candidate for office.

The Takeaway:

"When used with proper care, judges' use of EMS does not necessarily compromise their duties under the Model Code any more than use of traditional and less public forms of social connection, such as U.S. Mail, telephone, email and texting."

## DISCIPLINARY ACTIONS FY 13

September 1, 2012 – April 8, 2013

State Commission on Judicial Conduct

### **Public Sanctions**

*Public Warning:* The Commission found Aransas County Court at Law Judge in violation of Canons 3B(4), 4A(1), and 4A(2) because a video released by his daughter showing him forcefully striking her with a belt, yelling profanities, and threatening her with physical harm cast reasonable doubt on his capacity to act impartially as a judge and interfered with the proper performance of his judicial duties. The video caused the Commissioner of TDFPS and several attorneys who regularly practiced in the judge's courtroom to question the judge's ability to act in a fair and impartial manner when presiding over child abuse and neglect cases. The Commission acknowledged that the judge was not aware that he was being filmed, but noted that his private

conduct still cast public discredit on the judiciary. The Judge was also found to have treated attorneys in his courtroom below the minimum standard of patience and courteousness because he demonstrated a pattern of anger and poor judicial demeanor. (CJC No. 12-0217-CC, Signed 09/04/12)

### Private Sanctions

None available for FY 13 as of April 8, 2013.

### Suspensions

None available for FY 13 as of April 8, 2013.

### Resignations

Judge: Margaret Polansky

Court: Caldwell Municipal Court

Agreement Date: 09/17/12

Caldwell, Burleson County

# Texas Ethics Commission

## Sworn Complaints

Editor's Note: Complaint orders with duplicative facts and findings to those listed below were omitted.<sup>1</sup>

Date Issued	Violations	Sanction
11/12/2012	Respondent was a candidate for City Council and was an opposed candidate in the run-off election. Candidate filed the 30-day pre-election report 7 days late and therefore violated section §254.064(b). SC-31110235	\$250 civil penalty
12/14/2012	Respondent was the treasurer for a general-purpose political committee. The Committee found a technical violation because the semiannual report disclosed \$5,815.65 in contributions maintained and the bank statement showed \$6,315.65. However, the correct amount did not exceed the lesser of 10% of the amount originally disclosed or \$2,500. Respondent made political expenditures to support candidates in the November election, and therefore should have filed 30-day and 8-day pre-election reports; respondent violated §254.154. Respondent also erroneously disclosed expenditures as contributions in violation of §254.151(4). Respondent also failed to timely report two contributions which exceeded \$100. SC-3120101	\$1,000 civil penalty
12/17/2012	Respondent was a campaign treasurer for a general-purpose political committee. The Commission found that Respondent only committed a technical violation by failing to identify the candidates and/or officeholders and/or general-purpose committees supported by the committee in its reports because he disclosed their names and addresses in Schedule F. The Committee also found that VFW accurately described a payee because VFW is a commonly used acronym for "Veterans of Foreign Wars." Respondent did violate §254.031(a)(3) by failing to disclose category descriptions for 56 expenditures, even though purpose descriptions were disclosed for those expenditures. Respondent also violated §254.036(h) by filing reports without his digitized signature. SC-31104105	\$750 civil penalty

Date Issued	Violations	Sanction
12/20/2012	Respondent was the campaign treasurer for a general-purpose committee. Respondent violated §253.037(a) by making \$65,000 in political expenditures before accepting political contributions from at least 10 persons. The Respondent only accepted a contribution of \$100,100 from one individual. Respondent made a technical violation by filing a report without his signature or the assistant campaign treasurer's signature, instead allowing someone else to sign and file the report. SC-3120248	\$6,450 civil penalty
12/27/2012	Respondent was a state representative. Respondent failed to accurately disclose the amount of contributions maintained. The average difference between the amounts reported and the balance on the bank statements for that period was \$10,930 and were therefore not technical violations. Respondent also violated §254.031(a)(8) because he only disclosed the initial of their first and middle names and their last names, which are not their full names as required. Respondent also failed to disclose the occupation or job title of numerous contributors of over \$500. Respondent also accepted contributions from out-of-state political committees before receiving the proper documentation required by §253.032(a) nor did he report the political committee's PAC identification number. There is no violation when the out-of-state political committee is registered with the Commission. Expenditures made for a golf tournament that Respondent holds as a political fundraiser is not considered personal use because it is in connection with his activities as an officeholder. Respondent did violate §254.031(a)(3) by failing to properly report a staff reimbursement. Respondent also violated §571.1242(c) by failing to respond to a Category Two sworn complaint. SC-3110227	\$750 civil penalty
01/03/2013	Respondent was a District Court Judge. The Commission found that describing an expenditure as "holiday gifts to staff" is sufficient for the purpose of §254.031(a)(3) and that it does not require that actual recipient be disclosed. Respondent violated §254.031(a)(6) by improperly disclosing officeholder expenditures as non-political expenditures in Schedule I, thereby reporting the wrong total expenditures on semiannual reports. Using the description "office supplies" or some close variation is sufficient for describing the purpose of an expenditure. However, "sponsorship" is not a sufficient description for the goods or services purchased by Respondent. The Commission also found that computer difficulties did not excuse the failure to disclose the correct office sought and the campaign treasurer's telephone number on semiannual report coversheets. The Commission also stated that purchasing Rosetta software to better communicate with voters and dinner expenses for attendance to local political party dinners were not personal use so long as they were ordinary and necessary expenses in connection to her duties in office. Respondent did not make contributions to political committees for a primary election when a payment was made for part of an ad for the democratic party in the local newspaper that did not exceed her pro rata share of the ad expense, nor if she paid for sponsorship/advertising/goods/admission to an event and the total value of that contribution exceeded the amount paid. However, direct contributions to the local political party with nothing of equal or greater value received in return, reported by the committee itself as political contributions, are in violation of §253.1611(b). SC-3120101	\$350 civil penalty

Date Issued	Violations	Sanction
02/19/2013	Respondent was a District Judge. Respondent made a technical violation by failing to accurately disclose the amount of political contributions maintained. Respondent violated §254.031(a) by failing to disclose the correct amount of an expenditure by \$400. Respondent also violated §254.031(a) and Rule 20.61 because although she disclosed descriptions for each of her expenditures on several annual reports, she did not include categories. Respondent violated §253.1611 by using her political contributions to make contributions exceeding \$250 to general-purpose political committees during years in which her office was not on the ballot. However, Respondent made no violation when the political contributions were made to the county executive committee and were for her pro-rata share of the normal overhead and administrative costs of the party. SC-31107173	\$500 civil penalty
02/19/2013	Respondent was a limited partnership with an incorporated general partner. A partnership that has corporate partners is subject to the same restrictions on political activity that apply to corporations. Therefore, Respondent violated §253.003 and §253.094 by making a \$100 contribution to an elected officeholder. SC-31109213	\$100 civil penalty
02/22/2013	Respondent was the campaign treasurer for a general-purpose political committee. Respondent violated §254.151(3) by failing to include the election information on his cover sheet. In this case, the Commission found that it was only a technical violation that Respondent disclosed the purpose of political expenditures without including categories. Respondent also violated §254.031(a)(6) because he was reporting administrative expenses as non-political expenditures, thereby causing the total expenditures on the financial reports to be inaccurate. Administrative expenses should be reported as political expenditures. The Commission does not have jurisdiction to determine if there was a violation when the payments at issue were made by Respondent for reimbursement to a federal political action committee; the payments are governed by federal law. SC-31105150	\$500 civil penalty
02/25/2013	Respondent was a campaign treasurer for a general-purpose committee. Respondent failed to timely file the reports required by §254.153 and §254.154. Respondent committed a technical violation by failing to list identify the candidates or officeholders and general-purpose committees supported by the committee in its reports because he disclosed their names and addresses in Schedule F. Respondent also accepted contributions from out-of-state political committees before receiving the proper documentation required by §253.032(a) nor did he report the political committee's PAC identification number. He also failed to properly disclose the full name of the out-of-state committee because he listed it as "IBT DRIVE" which is not a commonly used acronym. SC-31105124	\$2,500 civil penalty
03/05/2013	Respondent was a candidate for state representative. Respondent violated §255.006(c) because his advertising signs stated "Elect [name omitted] State Representative [district omitted]." Without using the word "for," Respondent made representations that he was the current officeholder. SC-31204111	No Sanction

Date Issued	Violations	Sanction
04/12/2013	Respondent was a general-purpose committee. Respondent violated §253.163(a) by making a \$23,000 contribution to a district judge's campaign without filing a notice of intent to exceed the expenditure limit. SC-3120380.	\$1,200 civil penalty
04/19/2013	Respondent was the campaign treasurer of general-purpose committee. Although Respondent did not disclose the names of the candidates supported or opposed, the Commission stated that when the name of the committee includes a party identification that the requirement is satisfied. Respondent violated §254.031(a)(6) because he was reporting administrative expenses as non-political expenditures, thereby causing the total expenditures on the financial reports to be inaccurate. Respondent may have violated §253.094 by accepting a \$500 contribution from a partnership that has a corporation as a general partner, however, it was unclear as to whether the contribution was permissible under §253.100 as a contribution to establish the general-purpose committee. Respondent did violate §254.151(9) by failing to disclose the contribution on the correct report. SC-31110233	\$500 civil penalty
04/23/2013	Respondent was incumbent candidate for district clerk. Respondent violated §254.031(a) by failing to provide proper descriptions for political expenditures. "Food/beverage" and "cell phone" are not sufficient descriptions of the purpose of expenditures. Respondent did not disclose the proper payee when listing a bank as the payee for a withdrawal described as "petty cash." Respondent also violated §254.031(a)(3) by not disclosing the full address of payees – only their city and state. Respondent also failed to properly reimburse himself for use of his personal funds. SC-31112282	\$1,000 civil penalty

<sup>1</sup>Omitted opinions include:

SC-312241 (12/20/12) (accepted contributions from a corporation)

SC-31209264 (12/27/12) (failed to timely file report)

SC-31207227 (12/27/12) (failed to timely file reports)

SC-31105142 (12/27/12) (failed to properly report contributions maintained; and technical violation for making contributions to general-purpose committees and identifying the candidates or measures supported or opposed on Schedule F and not on coversheet)

SC-31105140 (01/02/13) (failed to properly report contributions maintained; and failed to file timely reports)

SC-311477 (02/21/13) (technical violation for making contributions to general-purpose committees and identifying the candidates or measures supported or opposed on Schedule F and not on coversheet; and failure to accurately disclose contributions maintained)

SC-31205141 (02/22/13) (accepted a campaign contribution without a treasurer on file; and failed to timely file reports)

SC-31105144 (02/25/13) (technical violation for making contributions to general-purpose committees and identifying the candidates or measures supported or opposed on Schedule F and not on coversheet; improperly reported administrative expenses as non-political expenditures; and failed to accurately report contributions maintained)

SC-31108177 (04/15/13) (technical violation for making contributions to candidate without identifying the candidates or measures supported or opposed on Schedule F and not on coversheet; failed to disclose contributors' principal occupation; failed to disclose contributors' full names; and failed to timely file reports)

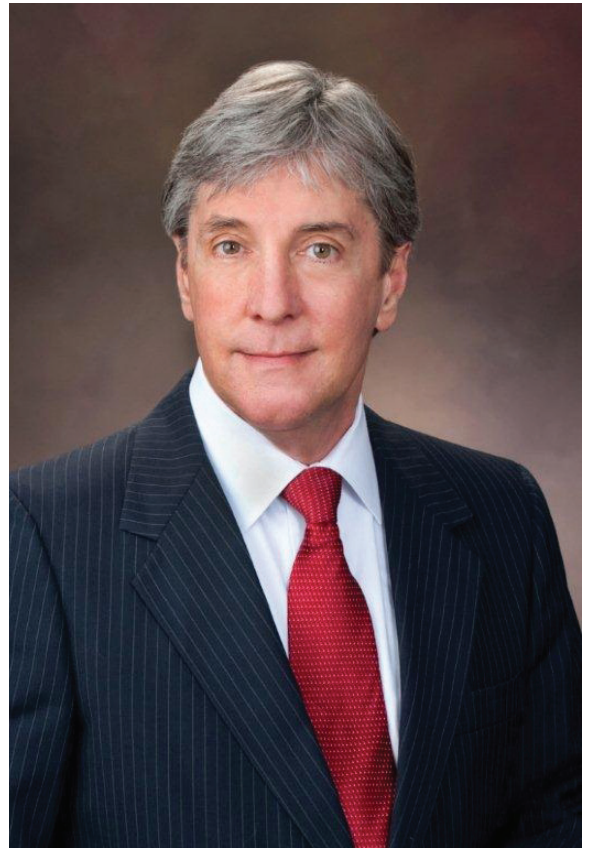
SC-31105110 (04/16/13) (technical violation for making contributions to candidate without identifying the candidates or measures supported or opposed on Schedule F and not on coversheet; failed to timely file reports; and failed to accurately report contributions maintained)

SC-31206192 (04/22/13) (failed to timely file reports)

SC-3112274 (04/23/13) (failed to timely file complete reports)

Welcome to In Chambers. As I write this letter, I have a copy of the September, 1983 issue in my hands. It is twenty pages in length; black and white except for a blue header on the cover page. The font is reminiscent of a typewriter. The front page headline reads, “Judicial Education becomes Mandatory” and is accompanied by a photo of Governor Mark White signing the House Bill that mandated 16 hours of judicial education per year for Texas judges.

That issue of In Chambers was published three and a half years before I took the Bench, in January, 1987. It is remarkable how much has changed yet stayed the same in the 25 years since that issue appeared. In Chambers is now published as an online publication instead of print; Texas Center Conference materials appear on iPad/iPhone apps. Yet, one thing has remained the same: the Texas judiciary continues its pursuit of excellence so allowing Texas courts to administer justice with fairness, efficiency, and integrity.



It is a great honor for me to serve my fellow judges as Executive Director of this institution. Let me take this opportunity to briefly introduce or reintroduce myself.

I was licensed to practice law in May, 1980, after graduating from South Texas College of Law. I built a general law practice focusing on trial practice -- criminal, family and civil, until I ran for office. In 1986, I was elected to the judgeship of a newly created court in Harris County. I served six terms over the next 24 years on that Bench. I decided not to seek re-election to a seventh term and retired in 2010. For the past two years I have held the position of Judicial Resource Liaison under our TxDOT Traffic Safety Grant Program at the Texas Center. In January of this year I became the Texas Center's fifth Executive Director.

My years on the Bench were great. I loved the job. Even when it was rough, I could not wait to get to court in the morning. It was never boring. Being a County Criminal Court at Law judge allowed me to handle cases of young adults, many of whom could be straightened out by the right judicial approaches, which was the most rewarding part of the job.

The Executive Director position is not only an honor but a challenge as well. I served as Chair of the Texas Center and the Judicial Section in 2001, so I come to this position with a great deal of understanding for the organization's past and promise for the future. The Texas Center feels like home to me – and I hope it does to you too. I am now more than just a judicial colleague – I am staff, here to serve the judicial educational needs of our judges.

## Letter from the Executive Director

I'll wrap this up by directing your attention to language from the Texas Center By-laws. In this Article and Section of our By-laws, it is made clear that our judges are characterized as members of the organization.

### ARTICLE III

#### Members

##### Section 1.

#### Qualifications.

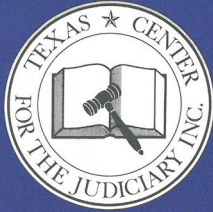
a. The members of the Corporation shall consist of the following judges and judicial officers of the State of Texas: Justices of The Supreme Court and Judges of the Court of Criminal Appeals, Justices of the Intermediate Courts of Appeal, District Judges, Judges of County Courts at Law, Statutory Probate Judges, and retired and former Judges and who have elected to accept assignment as visiting judges. Each member shall serve and be entitled to all privileges of membership coterminous with the term of office held.

Our judges, being members of our organization, are deserving of the best possible efforts and service our excellent staff can provide. It is my hope that our judges will never hesitate to ask us for any needed assistance.

I look forward to serving the judges of our state now and in the future.

Yours,

Mark



# IN CHAMBERS

Official Publication of The Texas Center for the Judiciary, Inc., P.O. Box 12487, Capitol Station Austin, Texas 78711

Volume 10, No. 3

September, 1983

## Judicial education becomes mandatory

Like their counterparts in 40 other states, Texas judges will soon be required to keep abreast of the latest laws and judicial decisions by completing continuing education courses.

On July 16, Gov. Mark White signed House Bill 1212, sponsored by Rep. Terral Smith (R-Austin) and Sen. Kent Caperton (D-Bryan). The legislation, effective Sept. 1, mandates the attendance by judges to a number of

continuing judicial education courses.

The Supreme Court of Texas has set the guidelines, which will send nearly 600 judges -- including appellate, district, and county court-at-law jurists -- back to school periodically for further judicial learning.

"The guidelines essentially follow the very fine program now in existence through the Texas Center for

the Judiciary," said Supreme Court Justice Charles W. Barrow.

"New judges will enroll in the Center's 40-hour College for New Judges, and all other judges will be required to complete 16 hours of judicial education each year," added Justice Barrow, who is chairman of the Judicial Section's Committee on Education Standards and is a member of the Center's board of directors.

"This is just a natural outgrowth of what we've been doing with continuing judicial education since we began the Center ten years ago,"

See JUDICIAL EDUCATION, p. 3



**LEGAL PERSUASION**—Rep. Terral Smith, left, Justice Charles Barrow, and Judge Tom Davis look on as Gov. Mark White gives his approval to a bill mandating judicial education. "This is the only bill the Senate passed unanimously," Governor White noted while signing the measure into law.

### Between

Donations and challenges from the Houston Bar Foundation....p. 2

Arresting insights to life behind bars...p. 4

Working sight unseen-- a rare look at the Committee on Judicial Ethics .....p. 8

### the Lines

# Letter from the Executive Director

# Spotlight on the Staff



**Jennifer Morales:** Jennifer has worked at the Texas Center since September 2012 as our Education Registrar. She is a native Texan who graduated from the University of Texas at Austin in 2004 with a BA in Sociology and is currently a licensed real estate agent. Jen comes to us from the hospitality industry with over eight years of experience in conference and event planning. She is dedicated to her career and invests one hundred percent of her time and effort into every project. Outside of the office, you can catch Jen traveling the hill country, biking, golfing, or spending copious amounts of time with friends and family. If you ever have a question or comment about the Texas Center’s conferences or resources, Jen is your girl.

## Debra

**Malkiewicz:** Also new to the Texas Center is Debra. She graduated from UT Austin with a degree in Computer Science and has since worked a varied career. Highlights include accounting and taxation, software management / programming / quality tester for various companies in Northern



California and Austin. Debra comes to us from a 10+ year career as a professional photographer. She believes in total customer service and is very detail oriented. She takes ownership of whatever she takes on. When not at the office and not out taking photos she might be found walking her dogs, reading, gardening, or watching movies with her husband of 25 years. When time and travel permit she enjoys snorkeling and exploring tropical cities. For reimbursement questions, Debra is your answer.



## Texas Center Yearbook is in the Works

This year marks the 40th Anniversary of the Texas Center. We are proud and excited to be celebrating 40 years of Judicial Excellence Through Education. The Texas Center for the Judiciary exists because Texas judges care deeply about the need for quality judicial education. They understand the most important tool that can be given to judges is an educational program second to none for the sole benefit of judges.

To celebrate its 40th anniversary, the Texas Center will be publishing a yearbook in September. The yearbook will include pages dedicated to the history of the Center, as well as more recent pictures.

In order to make this project a success we need your help. We would like to include pictures of all current judges, whether active or retired (sitting by assignment) and need you to send us your photograph.

Please send your photo as an email attachment to [gailb@yourhonor.com](mailto:gailb@yourhonor.com) by May 31 for inclusion in the yearbook. Please make the subject of your email "Yearbook Photo." In the body of the e-mail please include the following information:

- Name as you would like it to appear. E.g. Judge Jonathan Smith or Judge Jon Smith
- Court Name. County courts at law, please include the name of your county. If you are a retired, senior or former judge, please designate your title, and the city in which you currently live.
- Bench Date.

Yearbooks will be available for pre-order for \$40 on your Annual Judicial Education Conference registration.

We also invite you to celebrate our 40th Anniversary with us at the Annual Judicial Education Conference in September. On Thursday, September 5 there will be a Gala dinner starting at 6:30 p.m. The Gala will include dinner, dancing, special performances entertainment and a silent auction. More information will be available in the Annual Conference brochure that will be mailed in June.

# Upcoming Conferences



Criminal Justice  
May 23-24, 2013  
Hilton Bella Harbor | Rockwall, TX

Child Welfare Conference  
May 21-23, 2013  
Westin La Cantera | San Antonio, TX

2013 Professional Development Program  
June 23-28, 2013  
Sheraton Austin Capitol | Austin, TX

DWI College  
July 01-02, 2013  
Omni Downtown | Austin, TX



2013 Annual Judicial Education Conference  
September 03-06, 2013  
JW Marriott | San Antonio, TX

College for New Judges  
December 01-04, 2013  
Hyatt Lost Pines | Lost Pines, TX

Winter Regional Conference A - Regions 1, 6, 7 & 9  
January 23-24, 2014  
Horseshoe Bay Marriott | Horseshoe Bay, TX

Winter Regional Conference B - Regions 2, 3, 4, 5 & 8  
February 20-21, 2014  
Moody Gardens Hotel | Galveston, TX

Family Violence  
March 27-28, 2014  
Tremont House | Galveston, TX



DWI Court Team Training  
April 07-09, 2014  
Location TBA

Texas College for Judicial Studies  
April 14-18, 2014  
Sheraton Austin Capitol | Austin, TX

Child Welfare Conference  
May 07-09, 2014  
Hyatt Regency Lost Pines | Lost Pines, TX

Criminal Justice  
May 15-16, 2014  
Hilton Bella Harbor | Rockwall, TX

Professional Development Program  
June 15-20, 2014  
Embassy Suites San Marcos | San Marcos, TX

DWI College  
July 10-11, 2014  
Radisson Austin - Downtown | Austin, TX

Annual Judicial Education Conference  
September 07-10, 2014  
Omni Fort Worth Hotel | Fort Worth, TX

College for New Judges  
December 07-12, 2014  
Sheraton Austin Capitol | Austin, TX

## Advisory Board

Hon. Steve Ables  
Hon. Marilyn Aboussie  
Hon. Harvey Brown

Hon. Paul Davis  
Hon. Kathleen Hamilton  
Hon. Bud Kirkendall

Hon. Dean Rucker  
Hon. Ben Woodward

# HONOR ROLL

As of April 25, 2013

## NEW JUDGES

Hon. Luis Aguilar	243rd District Court	El Paso
Hon. Patricia Alvarez	4th Court of Appeals	San Antonio
Hon. Amy Atkinson	County Court at Law No. 3	Conroe
Hon. Starr Bauer	36th District Court	Beeville
Hon. Will Biard	62nd District Court	Paris
Hon. Stacey Bond	176th District Court	Houston
Hon. Jeffrey Boyd	Supreme Court of Texas	Austin
Hon. Richard Boyer	22nd District Court	San Marcos
Hon. Katherine Cabaniss	248th District Court	Houston
Hon. Robert Cadena	83rd District Court	Del Rio
Hon. Carson Campbell	21st District Court	Brenham
Hon. Kelly Case	9th District Court	Conroe
Hon. Luz Chapa	4th Court of Appeals	San Antonio
Hon. Dominique Collins	Criminal District Court No. 4	Dallas
Hon. Charles Dickerson	123rd District Court	Carthage
Hon. Gerald Eddins	County Court at Law No. 1	Beaumont
Hon. Angela Ellis	315th District Court	Houston
Hon. Sergio Enriquez	448th District Court	El Paso
Hon. Roy Ferguson	394th District Court	Alpine
Hon. Scott Field	3rd Court of Appeals	Austin
Hon. Patrick Flanigan	County Court at Law	Sinton
Hon. Deeanne Galvan	County Court at Law No. 3	Corpus Christi

Hon. Oscar X. Garcia	357th District Court	Brownsville
Hon. Allan Garrett	33rd District Court	Burnet
Hon. John Gauntt	27th District Court	Belton
Hon. Kristin Guiney	179th District Court	Houston
Hon. Bradley Hart	230th District Court	Houston
Hon. Scott Johnson	County Court at Law	Pecos
Hon. Jack Jones	146th District Court	Belton
Hon. Kaycee Jones	411th District Court	Livingston
Hon. Betsy Lambeth	425th District Court	Round Rock
Hon. David Lewis	5th Court of Appeals	Dallas
Hon. Nora Longoria	13th Court of Appeals	Edinburg
Hon. Holly Magee	337th District Court	Houston
Hon. Jack Marr	24th District Court	Victoria
Hon. Susan McCoy	153rd District Court	Colleyville
Hon. Randolph McDonald	344th District Court	Anahuac
Hon. Jack McGaughey	97th District Court	Henrietta
Hon. Michael Moore	29th District Court	Palo Pinto
Hon. Brad Morin	71st District Court	Marshall
Hon. Diane Navarrete	Criminal District Court No. 1	El Paso
Hon. Kerry Neves	10th District Court	Galveston
Hon. Eddie Northcutt	8th District Court	Sulphur Springs
Hon. William Old	25th District Court	Seguin
Hon. Elaine Palmer	215th District Court	Houston
Hon. Beckie Palomo	341st District Court	Laredo
Hon. Annabell Perez	41st District Court	El Paso
Hon. David Perwin	387th District Court	Richmond
Hon. Sherry Shipman	16th District Court	Denton
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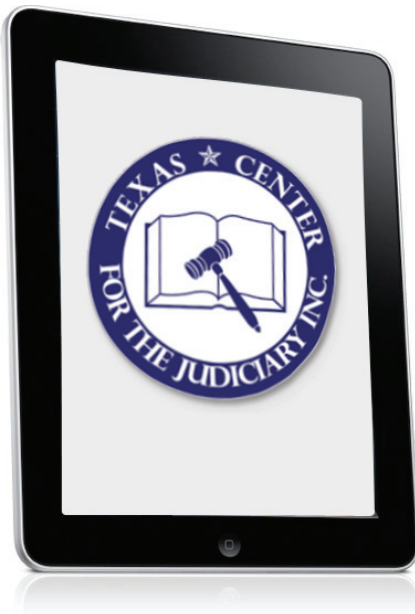
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# Texas Bench Book App

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NEW RESOURCES  
*for* JUDGES

Texas Bench Book App Now Available



Get the Texas Bench Book on your iPad, phone and other mobile devices!



The Texas Bench Book is a practical aid and quick reference for trial court judges. It includes checklists, sample scripts for hearings, trials, and guidelines.

You can download the Bench Book through the LawBox app in the Apple App Store and the Google Play store.

The app is FREE to all active Texas district, county court at law, appellate, probate and associate judges. To access the Bench Book, you will use the same username and password you use for [www.yourhonor.com](http://www.yourhonor.com). Step by step directions are available at [www.lawboxapps.com/association-instructions](http://www.lawboxapps.com/association-instructions).

The Bench Book is also available to view for free on our website.

For assistance with the Bench Book please contact us at 1-888-785-8986 or email [jenniferm@yourhonor.com](mailto:jenniferm@yourhonor.com).

## Judicial Security Forms

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Recent tragic events not only in our home state, but around the country, have many judges seriously evaluating their security protocols. For the convenience of the Texas judiciary, Justice David Evans - currently sitting on the Fifth Court of Appeals in Dallas - collected information and documents by which judges can further protect themselves and their families both at home and at the courthouse.

1. DPS driver's license: Each judge and spouse can change their driver's license to the courthouse address online for \$11 (see statute for authorization) by going to <http://www.txdps.state.tx.us/driverlicense/changes.htm>.
2. DPS CHL license: Each judge and spouse can change their CHL license to the courthouse address using the CHL-71 form and mail their \$25 as instructed.
3. Voter Registration: Each judge and spouse can suppress the address of their residence from the voter identification information by use of the Voter Registration bw9-2 form.
4. Real Property: Each judge and spouse can suppress their name from the real property records so that the property address and appraisal value will appear but not their name using the Texas Property Tax Form 50-284.
5. DMV registrations: Each judge and spouse can have the address shown on the registration for their vehicles changed to the courthouse ("location of vehicle") using the DMV Vehicle Change of Address form.
6. City Utilities: Each judge should contact their city of residence and ask for the form by which they can designate their residential information as confidential.

## Achieving Permanency for Legal Orphans

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### Forever Families: Improving Outcomes by Achieving Permanency for Legal Orphans

The National Council of Juvenile and Family Court Judges recently announced the release of its Technical Assistance Bulletin focused on achieving permanency for legal orphans. In the dependency court system, a legal orphan is a child whose parents' rights have been terminated and who has no legal permanent connection to a family. The child remains in foster care and has not been adopted or placed in a legal relationship with a guardian or with kin. With no family connections, these children frequently age out of the foster care system once they reach adulthood. At that point, they face statistically poor outcomes. This Technical Assistance Bulletin offers judicial practice recommendations to achieve permanency and improve outcomes for legal orphans. (April 2013)  
<http://www.ncjfcj.org/resource-library/publications/forever-families-improving-outcomes-achieving-permanency-legal-orphans>

## Treatment Interventions/ Screening Tools for Juveniles

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The NCJFCJ has compiled information on validated treatment interventions and screening tools in the Adolescent-Based Treatment Database and is extremely excited to roll this product out to the juvenile justice field! The database will serve as a valuable tool for juvenile drug courts (JDCs) by detailing intervention basics, special considerations for JDCs, and engagement strategies. The Adolescent-Based Treatment Database will serve as a "one-stop-shop" for JDCs researching adolescent-focused treatment and screening tools.

There are several ways to use the Database which are detailed in the Treatment Database Usage TIPS:

- Visitors can download or view the Adolescent-Based Treatment Interventions Comparison Matrix. The Comparison Matrix will help readers quickly identify brief, individual, group, and family interventions that may work in their jurisdiction,
- Visitors can download a complete copy of the Adolescent-Based Treatment Database and share the 33 page document with additional JDC team members, stakeholders, or partners,
- Visitors can click on any of the individual interventions to research the best fit for your jurisdiction.

Visitors to the Database should take the opportunity to visit the NCJFCJ's Juvenile Drug Court Information Center, as well. The Center has a wealth of JDC-related articles, resource tools, and information, all centered on the Juvenile Drug Courts: Strategies in Practice. JDC professionals can now visit one source to research information on the juvenile drug court preferred model and suggested adolescent-based treatments and screening instruments for their programs.

# NEW RESOURCES *for* JUDGES



## BENCH BOOKS

### **Texas Bench Book**

The Texas Bench Book is a practical aid and quick reference for trial court judges in performing their judicial responsibilities. It contains a compilation of information by the Texas Center for the Judiciary's Bench Book Committee and Texas Tech School of Law. Texas trial court judges will find several resource formats, including checklists, sample scripts for hearings and trials, and guidelines. Note that the Texas Bench Book is not designed to dictate judicial procedures, but is meant to assist a trial court judge while on the bench.

### **Capital Cases Bench Book**

The Capital Cases Bench Book is written by Texas judges for the benefit of Texas judges presiding over a capital trial. Judicial authors, Texas Wesleyan University School of Law, Texas Wesleyan Law Review editors, Texas Court of Criminal Appeals staff counsel, and the Texas Center for the Judiciary staff collaborated to write, proof, make suggestions, and edit the Capital Cases Bench Book. It is reviewed and updated on-line under the supervision of the Texas Center for the Judiciary and through the collaborative efforts of Texas judges and the Texas Wesleyan Law Review editorial staff. Note that the Capital Cases Bench Book is not designed to dictate judicial procedures, but is meant to assist capital case trial court judges. Judges presiding over capital cases should always double check the suggested substantive and procedural law for any changes in the law or unique differences in the specific case over which they are presiding.

### **CPS Bench Book**

Judges across the state now have access to essential information on child welfare law in a user-friendly, online CPS Bench Book. The Bench Book, which is the first of its kind, allows judges to navigate the bench book like a website. It was authored by seasoned district and associate judges with dozens of years on the bench presiding over CPS cases. The book is designed to benefit new judges and experienced judges alike. When researching with the Bench Book, a judge is able to search chronologically by event (e.g., investigations, removals, adversary, status, permanency, placement, final hearing, appeals, and adoption) and topically (ICPC, ICWA, Medical Care, or Permanency Care Assistance). The information is set out in a simplified format to facilitate real-time use from the bench. Or if further research is needed, all of the case law and statutory references are directly linked to Lexis/Nexis, free of charge. Through the Texas Center for the Judiciary's website, the CPS Bench Book provides secure access to checklists, practice notes, national and statewide policies, and numerous links to helpful guidelines, forms and other websites.

### **Public Health Law Bench Book**

The purpose of this bench book is to serve as a guide for judges who evaluate public health control measures, such as quarantine and isolation, particularly in the face of a catastrophic event such as a pandemic flu. The Texas Constitution discusses Texas' open courts policy, which is based on the importance of everyone having access to justice and to a day in court. The likelihood that this important aspect of our society could be disrupted during a public health emergency, such as a major hurricane or a more long-term emergency such as a pandemic flu, has led to the creation of this bench book and the forms included in its appendix. This book briefly lays out which laws govern during a public health emergency and what role the courts play in ensuring that the balance between public safety and individual rights is not forgotten.

## NEW RESOURCES for JUDGES

This bench book provides the Texas judiciary with a single, comprehensive reference for family violence law. In addition to identifying and organizing the relevant primary sources (state and federal statutes annotated with case law), the benchbook also takes advantage of current technology by providing hyperlinks to the online resources discussed in each

chapter's comments section. It is a project of the Office of Court Administration and funded with a grant from the Criminal Justice Division of the Office of the Governor in conjunction with the U.S. Department of Justice Office of Violence Against Women's STOP program.

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## JUDICIAL RESOURCES

### **American Bar Association**

The ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public.

### **Employees Retirement System of Texas**

Visit this website to review the JRS-II booklet which provides information regarding retirement benefits available to eligible justices, judges or commissioners of specified courts in the State.

### **JERITT**

The Judicial Education Reference, Information and Technical Transfer (JERITT) Project is the national clearinghouse for information on continuing judicial branch education for judges and other judicial officers; administrators and managers; judicial branch educators; and other key court personnel employed in the local, state, and federal courts.

### **Judicial Committee on Information Technology**

### **Judicial Ethics Opinions**

This section of the OCA website lists all the current opinions given by the Committee on Judicial Ethics.

### **Office of the Attorney General, State of Texas**

### **The Office of Court Administration**

The Office of Court Administration (OCA) is a state agency that provides administrative support and technical assistance to all of the courts of Texas. The agency was created in 1977 and operates under the direction of the chief justice of the Texas Supreme Court.

### **Out-of-State Meal and Lodging Rates**

Traveling to a conference out-of-state? Find out how much is authorized for meals and lodging.

### **Secretary of State, Elections Division**

### **State Commission on Judicial Conduct**

The 2010 State Commission on Judicial Conduct is the independent Texas state agency that is responsible for investigating allegations of judicial misconduct or judicial disability, and for disciplining judges.

### **Texas Courts Online**

## CASE, LAWS, RULES & STATUTES

### **Court of Criminal Appeals Opinions**

### **Court of Criminal Appeals Summaries 2007-2008**

### **Family Violence Judicial Training Statute**

### **Procedures and Rules Revisions**

### **Rules of Judicial Education**

### **SCOTUSblog**

### **Texas Constitution**

### **Texas Registrar**

### **Texas Rules of Appellate Procedures**

### **Texas Rules of Civil Procedure**

### **Texas Rules of Evidence**

### **Texas Statutes**

### **Texas Supreme Court Opinions**

## LEGAL RESEARCH

### **Cornell Law School's Legal Information Institute**

The site features the U.S. Code and state constitutions and codes, a collection of all recent opinions of the U.S. Supreme Court and state judicial opinions, overviews of various legal topics, and links to sites offering

court decisions, statutes, regulations and other legal materials.

### **Federal 5th Circuit Opinions**

Visit FindLaw's searchable database of the 5th Circuit Court decisions since July 1997. Also, review an archive of Opinion Summaries since September 2000. Browsable by year and searchable by docket number, case title, and full text.

### **findlaw.com**

This website offers resources on general laws and various legal topic.

### **law.com**

A comprehensive legal destination, law.com allows visitors to track breaking developments in the law, research issues and cases, explore nationwide job openings in the legal industry, and much more.

### **Texas Legislature Online**

## **PUBLICATIONS**

### **Indigent Defense Archives**

### **Standardized Felony Judgment Forms**

The Office of Court Administration, in collaboration with Texas criminal justice professionals, has prepared and promulgated the standardized felony judgment forms pursuant to Section 42.01 of the Texas Code of Criminal Procedure. Effective 01/11/02.

### **Mechanisms of Injury in Childhood**

Mechanisms of Injury in Childhood is now available on the Texas Center's website. This DVD resource utilizes sophisticated and detailed medical illustrations and animation as well as radiographs to demonstrate the location, characteristics, and biomechanics of injuries in young children that involve internal structures (fractures, head injuries, abdominal injuries). This DVD provides a realistic demonstration of injury mechanisms that go well beyond the capabilities of the typical two-dimensional illustrations. The goal for users of the DVD is an improved knowledge of injuries and findings in abuse cases, an understanding of the actual physical mechanisms of the injuries, and increased confidence in the assessment and investigation of cases of suspected child abuse. The DVD was produced by the

UT Health  
Science  
Center under  
the direction  
of Dr. James

D. Anderst, MD MSCI and Dr. Nancy D. Kellogg, MD and made possible by a grant from the Texas Children's Justice Act program.

NEW RESOURCES  
for JUDGES

## **ASSOCIATES, INSTITUTES, & AGENCIES**

### **ABA Family Law Section: Military Committee**

Find the Military Committee's Judges' Guide to the Soldiers' and Sailors' Civil Relief Act here.

### **Correctional Management Institute of Texas**

The Correctional Management Institute of Texas is responsible for developing and delivering professional development training programs for personnel in juvenile and adult institutional and community corrections agencies.

### **Department of Information Resources**

### **Judicial Family Institute**

The Judicial Family Institute serves as a clearinghouse for judicial officers and their families to be in contact with individual state and national judicial educational organizations for answers to questions that arise ranging from ethical issues to practical matters.

### **Judicial Section of the State Bar of Texas**

### **The Judicial Section of the State Bar of Texas**

### **National Association of Women Judges**

Founded in 1979, NAWJ is a non-profit organization with more than 1,400 members, including both female and male judges, from every state and all levels of the judiciary. The association's mission is to provide strong, committed judicial leadership to improve the administration of justice and to ensure fairness, gender equality and diversity in American courts.

### **National Center for State Courts**

Founded in 1971 by U.S. Chief Justice Warren E. Burger, the National Center for State Courts (NCSC) is a nonprofit organization that promotes justice through leadership and service to the state courts. Through numerous programs and divisions, the NCSC is committed to improving the administration of justice in the United States and abroad.

## NEW RESOURCES for JUDGES

### National Council of Juvenile and Family Court Judges

The National Council of Juvenile and Family Court Judges is dedicated to serving the nation's children and families by improving the courts of juvenile and family jurisdictions. Our mission is to better the justice system through education and applied research and improve the standards, practices and effectiveness of the juvenile court system.

#### **The National Judicial College**

Since 1963, The National Judicial College has provided educational and professional development opportunities to over 58,000 judges worldwide. From limited jurisdiction judges to U.S. Supreme Court justices, attendees from all areas of the judicial system have benefited from the very best in judicial education offered at the College.

#### **State Bar of Texas**

The State Bar of Texas is an administrative agency of the judicial branch in Texas. Every licensed attorney is a member of the State Bar, which provides a wide array of services to its members and the public.

#### **State of Texas**

The State of Texas website is intended to serve as the official compilation of Texas government electronic resources, both at the state and local levels, and as an index of Texas governmental or taxing authority web sites and services.

#### **Texas Access to Justice Commission**

The Supreme Court of Texas created the Texas Access to Justice Commission to coordinate services for people who need legal help but may not be able to afford it or find it. The Commission's goals include reducing barriers to the justice system and increasing resources and funding for Legal Aid.

#### **Texas Association for Court Administration (TACA)**

TACA is organized to encourage and promote continuing education and maintenance of professional standards for Court Administration in the State of Texas.

#### **The Texas Association of District Judges (TADJ)**

#### **Texas CASA**

Texas CASA advocates for abused and neglected children in the court system through the development, growth and support of local CASA programs.

#### **Texas Department of Criminal Justice**

#### **Texas Ethics Commission**

#### **Texas Lawyer Press**

#### **Texas Lawyers for Children**

Texas Lawyers for Children provides statewide assistance to judges and attorneys who handle child abuse and neglect cases. TLC's mission is to improve case outcomes for abused and neglected children by enhancing the quality of legal services they receive.

#### **Texas State Cemetery**

The Texas State Cemetery serves as the burial ground for Texas' most notable sons and daughters. The Cemetery includes the graves of 11 Governors, three Lieutenant Governors, two American Revolutionary War veterans, 64 Republic of Texas veterans, and 2,200 Confederate veterans and their spouses.

#### **Texas Statutes**

These files include revisions to the Texas Statutes through the 81st Regular Session of the Texas Legislature.

#### **Texas Trial Lawyers Association**

