



TADC

e-Update

The Texas Association of Defense Counsel, Inc.

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FROM THE PRESIDENT...

Fred D. Raschke, Mills Shirley, LLP; Galveston



The TADC has hit the ground running in 2008! The Texas House and Senate have released their charges for interim study committees and your TADC legislative committee is reviewing all the charges and preparing testimony to deliver on those that are relevant to the civil justice system. (to view interim charges by chamber, click [HOUSE](#) or [SENATE](#))

The 2008 Winter Seminar, recently held in Steamboat Springs, Colorado, was a great success. Program Chair Jerry Fazio assembled a great troop of speakers including Wayne Mason, current FDCC President and Justice Dale Wainwright of the Texas Supreme Court. Aside from the snow being outstanding, attendees received cutting edge news delivered by Justice Wainwright as he announced that the Supreme Court had just released publicly the decision in the Frank's Casing case. The TADC Amicus Committee had briefed this case on rehearing, and the result came down the right way.

You should have received by now the registration material for the 2008 TADC Trial Academy, to be held in Dallas on April 4-5. If you are a lawyer licensed less than five years, or if you have lawyers in your firm licensed less than five years, I would strongly suggest that you attend, or have them attend the Trial Academy. Attendees spend two days practicing courtroom and trial technique with the assistance of highly skilled trial attorneys and judges. This program has been a flagship for the TADC for 26 years. Be sure to register now as the program is limited to 42 attendees and spaces will fill quickly. For a registration form, [CLICK HERE](#).

Don't forget to calendar the 2008 Spring Meeting in Chicago, April 30-May 3. Program Chair Dan Worthington is finalizing his program and has secured outstanding speakers including judges from both the state and federal bench and lawyers from both Texas and Illinois. Spring is a great time to be in Chicago and after Thursday's CLE, meeting attendees and their guests will head to Wrigley Field to "catch" the Cubs vs. the

Brewers!

Finally, if you have not yet paid your TADC Dues, please do so. The TADC has the distinction of being the largest association of its kind in the United States. We are strong because of you, a strong membership. Visit the TADC website (www.tadc.org) and download an application for membership today to pass along to your colleagues and friends who are not yet members, and encourage them to join! There is no other voice representing your interests in Texas other than the TADC

NEWS OF MEMBERS

There are numerous TADC members who have entered the political arena and are running for office in 2008.

- Former TADC President **Patricia Kerrigan** has been appointed to the 190th District Court in Harris County. **Judge Kerrigan** is facing opposition in the Republican Primary this March
- TADC Members **Wade Birdwell**, with Wallach, Andrews & Stouffer, P.C. in Fort Worth and **Melody Wilkinson**, with Naman, Howell, Smith & Lee, L.L.P. in Fort Worth are running for the 17th District Court bench in Tarrant County.
- TADC Board Member **Lynette Fons**, with Beirne, Maynard & Parsons, L.L.P. in Houston is running for Houston Bar Association President Elect
- Former board member **Roland K. Johnson** with Harris, Finley & Bogle, P.C in Fort Worth is running for State Bar President Elect
- TADC Member **Bill Boyce** of Houston has been appointed to the 14th Court of Appeals in Houston

MEMORIALS

TADC Board Member **Vance E. Ivy**, with Packard, Hood, Bednarz, Johnson & Ivy in Amarillo passed away in late December after a brief illness. A scholarship fund has been set up for his children. Contributions may be made to the Ivy Children Scholarship Fund, c/o Amarillo National Bank, P.O. Box 1, Amarillo, Texas 79105

Honorary member and one of the original partners of the Orgain, Bell & Tucker law firm in Beaumont, **John Tucker**, passed away in January at the age of 100. An endowment has been established at Lamar University in his name. Contributions may be made to the John Tucker Endowment, c/o Lamar University, P.O. Box 10011, Beaumont, Texas 77710

Honorary member **William Eckhardt III**, formerly with Vinson & Elkins in Houston, passed

away in early January. A scholarship fund has been established in his name at the University of St. Thomas. Contributions may be made to the University of St. Thomas, in memory of William R. Eckhardt, III, Attn: Institutional Advancement, 3800 Montrose Blvd., Houston, TX 77006

TADC member **Walter J. Passmore** of McAllen passed away in mid-January after a lengthy illness. Memorial contributions may be made in honor of Walter Passmore to First Presbyterian Church, P.O. Box 1029 McAllen, Texas 78502.

LEGISLATIVE NEWS

For the first time in two decades, the March 4 primary election will have a significant impact on the presidential race. With both Democratic candidates running vigorous and well-funded campaigns in Texas, Democratic turnout is likely to break records, as it has in other primary states.

This high level of turnout will also affect legislative races in key areas of the state. At present, four so-called "Craddick" Democrats face what appear to be stiff primary challenges: Aaron Pena (D-Edinburgh), Kino Flores (D-Mission), Kevin Bailey (D-Houston), and Dawnna Dukes (D-Austin). In each of these races, speaker politics have become a central issue, and the outcomes will be crucial to the election of the Speaker when the House convenes in January.

The Republican primary, while no longer critical at the presidential level, likewise features a number of contested legislative races that implicate the Speaker's race. Craddick opponents Charlie Geren (Fort Worth), Byron Cook (Corsicana), and Delwin Jones (Lubbock) face challenges, as do Craddick supporters Joe Crabb (Humble), Betty Brown (Greenville), and Jerry Madden (Plano).

Once the dust settles from the primaries, we can expect interim legislative committee hearings to commence. Of particular interest will be the proceedings of the Senate State Affairs Committee, which will examine the Entergy v. Summers decision and its impact, the economic effects of civil justice reforms adopted in the last several years, and whether Texas should adopt the Restatement of Torts' recommendation for a cause of action for filing a meritless lawsuit.

TADC will keep you fully apprised of these hearings and TADC's response to these and other issues.

UPCOMING EVENTS

****SPECIAL REMINDER - TADC 2008 TRIAL ACADEMY**

Registrations have been mailed for the 2008 TADC Trial Academy, to be held in Dallas on April 3-5, 2008 at the Dallas Omni Hotel at Park West. The Trial Academy has only a limited amount of space available (42 Attendees only). DON'T MISS this outstanding Trial Advocacy Seminar designed specifically for attorneys licensed 1-5 years.

For registration materials [CLICK HERE!](#)

In Re: Clapp
(Tex.App. Dist.5 12/20/07)

The trial court's order was an abuse of discretion, because it permitted discovery to be conducted contrary to the prohibitions stated in Chapter 74, Texas Civil Practice & Remedies Code. Dallas Court of Appeals, No. 05-07-01109-CV. **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

In Re: D.K.M.
(Tex.App. Dist.3 12/20/2007)

The Texas Rules of Civil Procedure do not provide for a defendant's motion to dismiss, except possibly for want of prosecution after a plaintiff fails to appear at a hearing or trial setting. Austin Court of Appeals, No. 03-05-00701-CV. **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

O'Quinn v. Wood
(Tex.App. Dist.12 12/21/2007)

The 12th Court of Appeals dismissed attorney John M. O'Quinn's interlocutory appeal and petition for a writ of mandamus complaining of the trial court's order denying, on the merits, O'Quinn's motion to vacate the arbitration panel's class determination award. Tyler Court of Appeals, Nos. 12-07-00050-CV and 12-07-00109-CV **TO READ THIS OPINION IN FULL, [CLICK HERE](#) and [HERE](#)**

In Re: Great Lakes Dredge Dock Company, L.L.C.
(Tex.App. Dist.13 01 /10/2008)

Texas law prohibits parties from contracting away mandatory venue. The trial court properly refused to enforce such an agreement in this case. Corpus Christi Court of Appeals, No. 13-07-437-CV. **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**

Excess Underwriters at Lloyd's, London v. Frank's Casing Crew & Rental Tools, Inc.
(Tex. 02 /01/2008 from Harris County, 14th District 14-01-00349-CV, 93 SW3d 178, 06-27-02, Texas Supreme Court 02-0730)

On January 6, 2006, we granted respondent's motion for rehearing. We now withdraw our opinion issued May 27, 2005, and substitute the following.

In Texas, an insurer that settles a claim against its insured when coverage is disputed may seek reimbursement from the insured should coverage later be determined not to exist if the insurer "obtains the insured's clear and unequivocal consent to the settlement and the insurer's right to seek reimbursement **TO READ THIS OPINION IN FULL, [CLICK HERE](#)**