



FROM THE PRESIDENT

Clayton E. Devin, Macdonald Devin, P.C., Dallas

The TADC hit the ground running in 2016! In January, a strategic planning meeting was held in Austin, with a broad range of practice areas and age groups represented. The meeting's goals were to identify challenges and begin development of strategies for member services and association operations for the future. For the first time, a Long Range Planning Committee has been created, with the goal of identifying and implementing goals and strategies for the association's future.

Your Board of Directors met the day following the strategic planning meeting. In accordance with association bylaws, the Board confirmed the following officer positions:

President – Clayton Devin
Executive Vice President – Chantel Crews
Secretary – Barry Peterson
Publications Vice President – Slater Elza
Director, District 8 – Mitzi Mayfield
Director at Large – Don Jackson

These changes were made necessary by the passing of TADC President Milton Colia. Terms for these offices will run through October 31, 2016

The 2016 Winter Seminar was held January 27-31, 2016 in Telluride, Colorado. The TADC was joined by the Louisiana Defense Counsel in what proved to be an excellent seminar. Program Chairman Joe Hood from El Paso assembled a great cast of speakers. Judge Steven Hughes with the Eighth Court of Appeals advised of recent important decisions from Texas Courts of Appeals. There were presentations on “Recent Developments in Legal Ethics”, “Trends in Litigation” and “Non-Competition Agreements in Texas,” to name a few.

The legislature may not be in session, but many topics of interest have surfaced in the House and Senate Interim Studies. The TADC Legislative Committee has been studying the issues and preparing to submit information and present testimony as needed to the legislative committees. If you are aware of legislative and regulatory items that may affect the civil justice system, please let me or the TADC office know.

The 33rd TADC Trial Academy will be held in Houston at the South Texas College of Law on April 14-15, 2016. The Trial Academy is one of the best programs TADC has to offer. It is an excellent trial advocacy training program designed specifically for young attorneys licensed 6 years or less.

The Academy is an intensive 2-day program touching on all aspects of a trial from the opening statement to the closing statement. Attendees will earn a year’s worth of CLE credit and the cost is extremely economical. Registration for the Trial Academy may be found [HERE](#) or you can register online at www.tadc.org.

Be on the lookout for program and registration information for the 2016 Spring Meeting in Nashville. Program Co-Chairs Chantel Crews from El Paso and Trey Sandoval, from Houston, have put together a stellar line-up including Federal District Judge Xavier Rodriguez and Matthew Adams, Legal Director of Sony Music in Nashville.

I want to welcome our new members who joined in January 2016. You are what continues to make the TADC strong!

Daniel J. Paret, Brown Pruitt Wambsganss Ferrill & Dean, PC, Fort Worth

Lisa Richard, Burns Anderson Jury & Brenner LLP, Austin

Jacqueline M. Furlow, Beck Redden LLP, Houston

Joel Towner, Beck Redden LLP, Houston

R. Layne Rouse, Shafer, Davis, O’Leary & Stoker, Inc., Odessa

James E. Moreno, Kemp Smith, El Paso

Molly Higgins, Fletcher, Farley, Shipman & Salinas, LLP, Dallas

Haley Frances O'Neill, Fletcher, Farley, Shipman & Salinas, LLP, Austin
David R. Pettineo, Fletcher, Farley, Shipman & Salinas, LLP, Austin
Rodney E. Cox, Brock Person Guerra Reyna, PC, San Antonio
Susan Sullivan, Atlas Hall & Rodriguez, McAllen
Kimberly Daily, Orgain Bell & Tucker, L.L.P., Beaumont
Meagan W. Glover, Gray Reed & McGraw, P.C., Houston
Kent L. Harkness, Gray Reed & McGraw, P.C., Houston
Brian E. Waters, Gray Reed & McGraw, P.C., Houston
Kenneth J. Ferguson, Gordon & Rees, Austin

Hug your kids, or your dog, or someone you love. Have a pleasant and safe President's Day weekend!

Register Now

2016 TADC TRIAL ACADEMY

April 14-15, 2016 ~ South Texas College of Law - Houston, Texas

***If you have not yet registered for the TADC Trial Academy, do it today!
Space is limited to 36 applicants!***

***This will be your only opportunity until 2018! The Trial Academy is held
every other year in order to bypass the Texas Legislative Session.***

The Trial Academy is an **excellent opportunity** for 1-6 year lawyers to gain powerful skills in courtroom advocacy and an inexpensive alternative to many other programs.

The seminar is staffed by seasoned trial attorneys who act as instructors in this intense two-day program. Instruction in Cross & Direct Examination of witnesses, Voir Dire, and Opening & Closing Statements, all in a courtroom setting.

An attorney can earn nearly 1 full year of CLE at a very reasonable registration fee and the program is outstanding. This year's problem is commercial in nature. Register now as you will have to study course materials and the problem in advance of the Academy.

[CLICK HERE](#) for Trial Academy Registration Materials or Register online at www.tadc.org

LEGISLATIVE/POLITICAL UPDATE

Early voting for the March 1 party primaries begins on February 16 and extends through February 26. Voter turnout in presidential election years generally runs more than 20 percentage points higher than in non-presidential years, reaching a peak of 54.1% in the 2008. Given the high level of interest in both parties' presidential campaigns, we could see a record turnout in both the primaries and the general election. When this occurred in 2008, it resulted in a wave of Democratic victories in urban counties, produced a Texas House with 76 Republicans and 74 Democrats, and paved the way for the election of Rep. Joe Straus as Speaker. That election also shifted the judiciary in major counties in dramatic fashion. Could something similar happen this time?

With respect to the partisan balance of the Legislature, probably not. The Legislature has redrawn districts since then, leaving almost no swing districts anywhere in the state. More than ever, legislative elections take place in March, not November. Nevertheless, in a significant number of districts with primary races, the expected turnout could tip the scales one way or the other. While a number of House incumbents who support Speaker Straus (not to mention Speaker Straus himself) have tough primary challenges, some Straus opponents are likewise fighting for their political lives against more mainstream GOP opposition, so the potential outcome is far from clear. It should be noted that two TADC members and Straus supporters, Reps. Sarah Davis (R-

Houston) and Travis Clardy (R-Nacogdoches), have drawn primary opponents as part of the larger internal struggle within the GOP. We all need to do our part to make sure that Rep. Davis and Rep. Clardy, as well as other effective leaders in the Texas House, get re-elected. On the Senate side, two open seats are in play, but the outcome will not significantly affect the makeup of the Senate.

The Texas Supreme Court is another story altogether. All three incumbents--Justices Green, Guzman, and Lehrmann--have drawn opponents. Justice Green's opponent, Rick Green, is a former state representative from Dripping Springs who ran for the court six years ago (he was narrowly defeated in the GOP primary by Justice Lehrmann). The confusion of names alone spells serious trouble in a race with so little statewide name identification overall, so we have to do everything in our power to get the word out that the right Green in this race is *Paul Green*. Justice Guzman's challenger, a Dripping Springs lawyer named Joe Pool, ran unsuccessfully against Justice Brown two years ago. Given the primary election history of Supreme Court justices with Hispanic surnames (e.g., Xavier Rodriguez, Al Gonzales, David Medina), we cannot take this race lightly, either. Justice Lehrmann's opponent, Justice Michael Massengale, is a well-respected jurist on the First District Court of Appeals. Justice Massengale has some high-profile endorsements, such as TEXPAC, TLR PAC, and former Governor Perry, but Justice Lehrmann is a proven campaigner and very popular with GOP groups across the state. All three races look very tight at this point. Needless to say, victories by candidates with no judicial experience and almost no pertinent legal experience would be disastrous for the future of the court.

CALENDAR OF EVENTS

April 14-16, 2016

TADC Trial Academy

South Texas College of Law, Houston

K.B. Battaglini & Peggy Brenner, Program Co-Chairs

Registration Material or online at www.tadc.org

April 27-May 1, 2016

TADC Spring Meeting

Loews Vanderbilt Hotel - Nashville, Tennessee

Chantel Crews & Trey Sandoval, Program Co-Chairs

Registration Material to be mailed in Mid-February

July 6-10, 2016

TADC Summer Seminar

Omni Plantation - Amelia Island, Florida

Slater Elza and Arlene Mathews, Program Co-Chairs

July 29-30, 2016

TADC/NMDLA West Texas Seminar

Inn of the Mountain Gods - Ruidoso, New Mexico

Bud Grossman, Program Chair

August 5-6, 2016

Budget and Nominating Committee Meeting

Stephen F. Austin, Intercontinental - Austin, Texas

September 21-25, 2016

TADC Annual Meeting

Worthington Hotel - Fort Worth, Texas

George Haratsis & Brittani Rollen, Program Co-Chairs

LEGAL NEWS - CASE UPDATES

*Case Summaries Prepared by Robert Booth,
MillsShirley, LLP, Galveston*

***Silberstein v. Trustmark National Bank, 14-14-00660-CV (Tex. App.-Houston
[Dist. 14] 01/07/2016)***

The 14th Court of Appeals (Houston) reversed and remanded a jury finding based upon a successful challenge to the sufficiency of the evidence.

The houses at issue were sold at foreclosure by the Plaintiff and also subsequently purchased by the Plaintiff at the same foreclosure sale. The Defendants challenged the value

determinations of the homes for lacking evidentiary merit. The Plaintiffs valued 6 of the 10 homes using the comparable sales measure using involuntary sales as a benchmark. The appeals court found that comparable sales to determine value should result from voluntary sales, where the time and place of sale are similar. Therefore, the Plaintiff's expert report did not provide sufficient evidence to support the jury's verdict supporting the comparable sales values. The appellants provided expert testimony of values based upon income valuation and cost basis valuation which the court found to be probative of the actual fair market value of the homes in question. The court of appeals reversed and remanded for further proceedings because the jury's verdict went against the great weight and preponderance of the evidence. [View the Opinion HERE](#)

Melden & Hunt, Inc. v. East Rio Hondo Water Supply Corp., 13-15-00227-CV (Tex. App.- Corpus Christi [Dist. 13], 12/17/2015)

The Corpus Christi Court of Appeals upheld a trial court order denying dismissal of a suit against claims by the Defendant that the Plaintiff had failed to produce a sufficient certificate of merit.

The Plaintiff is a water supply company that brought suit against the Defendant for design and construction defects as well as breach of contract disputes. The Defendants sought to have the suit dismissed for failure to provide a satisfactory certificate of merit from a qualified expert per the Texas Civil Practice and Remedies Code, Chapter 150. The Plaintiff provided an affidavit from a professional engineer which provided a factual basis for all the Plaintiff's causes of action. The Defendant challenged the qualifications of the expert as not meeting the standards contained within Chapter 150 because the expert was not acting as an engineer at the time the expert issued the report. However, appeals court found that the expert had the necessary education and qualifications and that the "report provides information indicative of active engineering practice." Therefore, the Plaintiff provided a sufficient certificate of merit in both expert qualifications as well as factual evidence to survive a motion to dismiss. The trial court's dismissal order is affirmed. [View the Opinion HERE](#)

West 17th Resources LLC v. Pawelek, 04-14-00668-CV (Tex. App.-San Antonio [Dist.4] 12/23/2015)

In this case, the San Antonio Court of Appeals upheld a trial court judgment affirming the Defendant's superior title of property challenged by the Plaintiffs in a trespass to try title action.

The Defendants and their family own almost 300 acres in Karnes County. The Defendants to the lawsuit signed a mineral lease to the Plaintiffs. The portion of land in question, is a 1/10 interest that was held in trust by the Defendant's mother. Before the passing of the Defendant's mother, she conveyed her 1/6 interest in the property as well as the 1/10 interest she held in trust. The conveyance did not specify that she conveyed either interest in the property individually or as trustee. The court of appeals found that based upon the 4-corners of the document, the conveyance was meant to convey both the 1/6 interest held individually by the mother as well as the 1/10 held in trust. Further, the court also found in the alternative that the Defendants had superior title by prescription by satisfying the five-year statute of limitations. The trial court's order is affirmed. [View the Opinion HERE](#)

Henry v. Cox, 01-15-00583-CV (Tex. App.-Houston [Dist. 14] 12/22/2015)

The 1st Court of Appeals (Houston) upheld a temporary injunction issued by the district court against a Galveston county judge for unilaterally terminating the employment of district court support staff and attempting to interfere with the district court's right to hire necessary support staff.

A Galveston county judge sought to terminate the individual who fulfilled the Galveston County Directory of Judicial Administration who served an administrative post to both the Galveston county courts as well as the Galveston county district courts due to poor performance. The district courts disagreed with the termination and also sought to have a new position made for the individual with the same pay. The county judge refused to reinstate the individual and refused to pay the individual the same pay if she was re-hired under the new position. A district court judge sought a temporary injunction against the county judge to suspend the termination of the employee and to reinstate her with the same pay. The trial court granted the injunction and the county judge appealed the injunction as an inappropriate judicial action against the commissioner's court. The court of appeals found that the county judge had interfered with the ability of the district judges to hire and pay necessary support

staff, and that although the commissioner's court had the right to set salaries for the position in question, the salary could not be set arbitrarily. Therefore, the trial court's injunction suspending the termination and setting the salary of the employee was upheld as a proper exercise of supervisory jurisdiction under article V, section 8 of the Texas Constitution. [View the Opinion HERE](#)

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