Dallas Bar Association
HEADNOTES

November 2022 | Volume 47 | Number 11 | Focus | Immigration/International Law

Hon. Carolyn Wright to Receive Morris Harrell Professionalism Award

BY ANASTASIA TRIANTAFILLIS

When one asks the Honorable Chief Justice **Carolyn Wright** what motivated her to pursue her impressive career in the practice of law and the judiciary, her staggering (in its simplicity) response is: "My father told me that there is nothing that I cannot do." And, her professional mentor insisted that she go to law school. So, she did and found her passion in the law.

The recipient of this year's DBA Morris Harrell Professionalism Award is Chief Justice Carolyn Wright, a woman whose name has been placed next to many "Firsts" in our varied legal history; a title which she hopes the new generation of litigators will preserve and expand, so that the doors she opened, will remain open forever.

Chief Justice Wright was born in Houston to a military family, and her life experiences expanded drastically when the family moved to Japan. The Japanese culture incorporated respect, discipline, and formality even in the smallest daily activities, and provided comfort and a sense of safety to the young justice. Simultaneously, that same culture also taught her how to be a competitor and an achiever, trades she learned through her engagement in sports and martial arts. Chief Justice Wright is proud to admit that as a young girl she was especially competitive with the boys, whom she enticed to engage in games, with her "best-ever marble collection"!

As a carefree teenager in Japan, Chief Justice Wright did not suspect the drastic life changes that would come when her father announced that the family was to return back to the United States. Although it should come as no surprise that Chief Justice Wright was quite an opinionated child, this was one debate that she could not win.

Hon. Carolyn Wright

America in the 1960s was a very different environment for an African American girl who came from a background where she was taught that the world is an endless opportunity to flourish and develop. After the initial realization that not all people and establishments would accept her presence and attendance in their ventures, Chief Justice Wright armed herself with the determination to change things for all. She was not looking to be the first in her leagues, but her path led her to a road no one had walked before—and she took it.

"The key to freedom is education," her father used to tell her. So Chief Justice Wright equipped herself with all the knowledge she could gain—without consideration if the door was open for her. In any situation she faced, she would always ask herself: "Am I willing to put in the work to achieve it?"

Chief Justice Wright's journey to distinction started while still in high school when she became the first African American selected to go to Delaware's Girls State. Her brother and sisters followed her lead. After some initial confusion of the establishment upon her arrival, and the realization that she was there to stay, Chief Justice Wright proceeded to display her exceptional debating skills, which secured her the role of the Attorney General at Girl's State. She not only successfully won her arguments, but also earned the admiration and respect of her peers.

Never in her educational or professional path did Chief Justice Wright think that she did not belong.

After graduating from high school, she received an Associate of Arts degree in paralegal studies and obtained her Bachelor's degree at the District of Columbia Teachers' College while at the same time working in the Washington, D.C. Mayor's Office. During these years of public service, she worked zealously for the protection of young children and families and her work was noticed by her mentor, Dr. James Jones, who encouraged her to follow a legal career. Taking that encouragement to heart, she attended Howard University School of Law in Washington D.C. and became a licensed attorney—a moment she describes as the happiest day of her life. She was now equipped with the tools to make change happen.

Chief Justice Wright opened her private legal practice in Dallas at a time when African Americans did not hold positions as attorneys in any of the major law firms. She became one of only two African American women attorneys in Dallas to be in the private practice of law.

In 1983 she became an associate judge in the family courts, and in 1986 she became the first African American woman to be elected as a district judge, a position she held until 1995. As a family law judge, she introduced mediation as a mandatory tool for all custody-related cases, allowing for the process to become less strenuous and emotional for the children. The core values she worked to preserve for our legal system and new generations of litigators included: ethics, civility, and greater efficiency, diversity, and fairness in our courts.

In 1995 Chief Justice Wright was appointed as an Associate Justice on the Fifth Court of Appeals, and in 2009 she was appointed Chief Justice of the Fifth Court of Appeals—becoming the first African American Chief Justice of any intermediate appellate court in Texas. She served the Court in that position until her retirement after 35 years of judicial service.

During her admirable career, Chief Justice Wright devoted her time to innovations in the field of law, teaching at the Texas Center for the Judiciary and the National Judicial College, and mentoring and creating pipelines for young law students, attorneys and future judges. She continues her involvement with the Dallas Bar Association, the Dallas Bar Foundation's appellate internship named in her honor, the Texas Bar Foundation (as a former Chair), while continuing to serve as a Visiting Judge.

But don't expect any books published by Chief Justice Wright for the "secret of her success." She is a true believer that our life's work is "right here and right now," and she actively continues to provide her knowledge, invaluable inspiration and motivation to "anyone who wants to listen."

Congratulations to Chief Justice Carolyn Wright, Recipient of the 2022 Morris Harrell Professionalism Award! Join us in celebrating her at the DBA Awards Luncheon on Tuesday, November 9, noon, at the Arts District Mansion. RSVP at dallasbar.org. **HN**

Anastasia Triantafillis is an Associate at Walters, Balido & Crain, LLP and can be reached at anastasia.triantafillis@wbclawfirm.com.

Thank You to Our Major Donors

The Dallas Bar Association and Legal Aid of NorthWest Texas kicked off their annual Equal Access to Justice Campaign benefiting the Dallas Volunteer Attorney Program. A number of Dallas firms, corporations, and friends have committed major support. Join us in recognizing and thanking the following for their generous gifts*:

PRESIDENT'S COUNCIL
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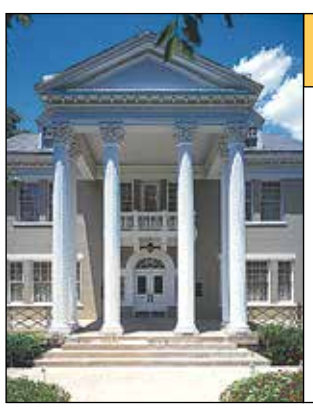
**As of October 3, 2022*



Inside

DBA MEMBER REMINDER – RENEW ONLINE NOW

You may renew your **2023 DBA Dues** now!

Go to dallasbar.org and click on the My DBA button to log in and Renew online.
Your 2023 DBA DUES must be paid by December 31, 2022
in order to continue receiving **ALL** your member benefits.

Thank you for your support of the Dallas Bar Association!

Programs and meetings are presented Virtually, Hybrid, or In-Person. Check the DBA Online Calendar (www.dallasbar.org) for the most up-to-date information. Programs in green are Virtual Only programs.

Calendar | November Events

Visit www.dallasbar.org for updates on Friday Clinics and other CLEs.

NATIONAL NATIVE AMERICAN HERITAGE MONTH

November is National Native American Heritage Month. For information visit https://buff.ly/3rKDw9p. For more on the DBA's Diversity Initiatives, log on to www.dallasbar.org.

FRIDAY CLINICS

NOVEMBER 18

Noon *"Jump Starting Professional & Personal Growth Through Bar Association Involvement: DBA President Prospective."* (MCLE 1.00)* *Virtual only*

TUESDAY, NOVEMBER 1

Noon **Corporate Counsel Section**
"General Counsel Panel: Corporate Counsel Outlook and Perspectives for 2023," Cheryl Murray, Bob Robinson, Mark Solls, and Brandy Treadway. (MCLE 1.00)*

3:30 p.m. **Judges Panel**
"Associate Judges and Magistrates: Who They Are and What They Do," Hon. Steven Autry, Hon. Ronald Hurdle, Hon. Tahira Khan Merritt, Hon. Drew Ten Eyck, and moderator Hon. Martin Hoffman. (MCLE 2.00, Ethics 1.00)* *Sponsored by the DBA Judiciary Committee. RSVP at dallasbar.org.* ***In person only***

4:30 p.m. **Environmental Law Section**
"Enterprise and Ethical Considerations: Making a Career (or a Career Change) in Environmental Law," Cynthia Bishop, Jonathan Bull, Anna Mance, James McGuire, and moderator Eric Chancellor. (Ethics 1.00)* ***In person only***

6:00 p.m. **DWLA Awards Reception**
More information at dallaswomenlawyers.org

WEDNESDAY, NOVEMBER 2

Noon **Employee Benefits & Executive Compensation Law Section**
Topic Not Yet Available

Solo & Small Firm Section
"Handling a Civil Appeal from Soup to Nuts: A Primer for the General Practitioner on the Nuts and Bolts of Civil Appeals," Chad Baruch. (MCLE 1.00)*

Allied Bars Equality Committee. In person only

Public Forum Committee. *Virtual only*

4:00 p.m. LegalLine E-Clinic. Volunteers needed. Contact mmejia@dallasbar.org.

THURSDAY, NOVEMBER 3

9:00 a.m. **Science & Technology Law Section**
"Technology Summit." More information at dallasbar.org. Virtual only

Noon **Construction Law Section**
"Legal & Ethical Considerations in Negotiating Cloud Contracts including Cyber Security and Privacy," Peter Vogel. (MCLE 1.00, Ethics 0.50)* ***In person only***

Admissions & Membership Committee. *Virtual only*

Criminal Justice Committee. *Virtual only*

Judiciary Committee. *Virtual only*

FRIDAY, NOVEMBER 4

3:30 p.m. **DBA Annual Meeting**
Reception at 3:30. Meeting starts promptly at 4:00 p.m.

SATURDAY, NOVEMBER 5

6:00 p.m. **JLTLA Gala**
More information at jlturnerfoundation.org/gala.html.

MONDAY, NOVEMBER 7

Noon **DBA Trailblazers Panel**
Meyling Ly-Ortiz, Kathleen Wu, and moderator Sadaf Abdullah. (MCLE 1.00)* *RSVP at dallasbar.org.* ***In person only***

Labor & Employment Law Section
"Annual L&E Year in Review," Joe Gillespie and Christie Newkirk. (MCLE 1.00)*

Tax Law Section
"State Tax Update: Nexus and Post-Wayfair Diligence in Mergers & Acquisitions," Steve Moore. (MCLE 1.00)* ***In person only***

TUESDAY, NOVEMBER 8

Noon **Business Litigation Section/TIPS**
"Trial Themes and Storylines," Pat Long. (MCLE 1.00)* ***In person only***

Immigration Law Section
"How To Keep Your Bar License Safe from The Office of The Chief Disciplinary Counsel," Robert Bennett. (Ethics 1.00)* ***In person only***

Mergers & Acquisitions Section
"State of Public and Private M&A Markets," Alex Dochter and Dan O'Donnell. (MCLE 1.00)* *Virtual only*

Home Project Committee. ***In person only***

Legal Ethics Committee. ***In person only***

6:00 p.m. DLGBT Bar Association Board Meeting

WEDNESDAY, NOVEMBER 9

Noon **DBA Awards & Court Staff Luncheon**
All members invited. We will honor DBA award recipients, present our Committee and Section awards, and recognize court staff. RSVP to lhayden@dallasbar.org.

Family Law Section
Topic Not Yet Available

4:00 p.m. LegalLine E-Clinic. Volunteers needed. Contact mmejia@dallasbar.org.

THURSDAY, NOVEMBER 10

Noon CLE Committee. *Virtual only*

Publications Committee. *Virtual only*

Christian Lawyers Fellowship

FRIDAY, NOVEMBER 11

Noon **Living Legends Program**
Don Godwin interviewed by DBA President Krisi Kastl. (Ethics 1.00)* *Virtual only*

Government Law Section
Topic Not Yet Available

MONDAY, NOVEMBER 14

Noon **Alternative Dispute Resolution Section**
Topic Not Yet Available

Real Property Law Section
"Capital Title Commercial and 1031 Deferred LLC," Cori Iadonisi and Lisa Murphy. (MCLE 1.00)* ***In person only***

Peer Assistance Committee. ***In person only***

TUESDAY, NOVEMBER 15

Noon **Public Forum: Cultural Competency**
"Cultural Competency: Sharing Perspectives Toward the More Inclusive Workplace," Jane McBride, Meyling Ortiz, and Jane Howard-Martin, moderator. (DEI Ethics 1.00) RSVP at dallasbar.org. Co-sponsored by Allied Bars Equality Committee, Public Forum Committee, and Association of Corporate Counsel. Virtual only*

Antitrust & Trade Regulation Section
Topic Not Yet Available. Virtual only

International Law Section
"The World-Wide Impact of Energy," James Wicklund interviewed by John Holden. (MCLE 1.00)*

Community Involvement Committee. *Virtual only*

Entertainment Committee. *Virtual only*

WEDNESDAY, NOVEMBER 16

Noon **Energy Law Section**
Topic Not Yet Available

Health Law Section
"What to do When the Government Comes Calling," Jenny Givens and Tony Box. (MCLE 1.00)* *Virtual only*

Law in the Schools & Community Committee. *Virtual only*

Pro Bono Activities Committee. *Virtual only*

4:00 p.m. LegalLine E-Clinic. Volunteers needed. Contact mmejia@dallasbar.org.

THURSDAY, NOVEMBER 17

Noon **Appellate Law Section**
"The Core of Trial Strategy: Avoiding Gotcha's and Error Preservation," Doug Lang. (MCLE 1.00, Ethics 0.50)*

Minority Participation Committee. *Virtual only*

Christian Legal Society. ***In person only***

4:00 p.m. DBA Board of Directors Meeting

FRIDAY, NOVEMBER 18

Noon **Friday Clinic**
"Jump Starting Professional & Personal Growth Through Bar Association Involvement: DBA President Prospective." (MCLE 1.00)* *Virtual only*

Trial Skills Section
"The Art of Cross Examination in the Lizzie Borden Trial," Michael Hurst, Bill Mateja, Hon. Rebecca Rutherford, Kacy Miller, Bridget Sullivan, and moderator Fred Moss. (MCLE 1.00)* ***In person only***

MONDAY, NOVEMBER 21

No DBA Events Scheduled

TUESDAY, NOVEMBER 22

Noon **Probate, Trusts & Estates Law Section**
Topic Not Yet Available Virtual only

WEDNESDAY, NOVEMBER 23

No DBA Events Scheduled

THURSDAY, NOVEMBER 24

DBA offices closed in observance of Thanksgiving

FRIDAY, NOVEMBER 25

DBA offices closed in observance of Thanksgiving

MONDAY, NOVEMBER 28

9:00 a.m. **Sand Branch Food Drive**
Donate canned & nonperishable food items to benefit the Dallas County Sand Branch Community. Drop off at Arts District Mansion. Runs through Dec. 16. Contact jessies@dallasbar.org.

Noon **Securities Section**
Topic Not Yet Available

TUESDAY, NOVEMBER 29

9:00 a.m. **Giving Tuesday**
Celebrate giving by giving back to DVAP – www.dvapcampaign.com

Noon DBA CSF Board Meeting

WEDNESDAY, NOVEMBER 30

Noon **Legal History Discussion Group**
"The Prophet of Harvard Law, Professor James Bradley Thayer," Andrew Porwancher. (MCLE 1.00)* ***In person only***

Mark Your Calendar!

DBA Annual Meeting
Friday, November 4, 4:00 p.m.

DBA Awards Program & Luncheon
Wednesday, November 9, Noon

More information to come.
Stay up-to-date at www.dallasbar.org.

If special arrangements are required for a person with disabilities to attend a particular seminar, please contact Alicia Hernandez at (214) 220-7401 as soon as possible and no later than two business days before the seminar.

All Continuing Legal Education Programs Co-Sponsored by the DALLAS BAR FOUNDATION.

For confirmation of State Bar of Texas MCLE approval, please call the DBA office at (214) 220-7447.
****For information on the location of this month's North Dallas Friday Clinic, contact yhinojos@dallasbar.org.***

President's Column

A Time of Giving and Gratitude

BY KRISI KASTL

"Living in a state of gratitude is the gateway to grace." –Arianna Huffington

November is a time for gratitude and comfort. The year is soon ending, and so is my tenure as the Dallas Bar President. I am grateful for the time I have spent collaborating and celebrating with a magnificent group of legal professionals dedicated to giving back to our community and fostering growth. This month is ripe with tradition, both personally and professionally.

Giving and Receiving

The Kastl family gatherings are epic. This year we are having Thanksgiving at my brother's house. Shared stories and laughter fill the days as we reconnect and celebrate. We give thanks for the graces of the preceding year and acknowledge the importance of family. This also kicks off the holiday season and I cherish the warm feeling of the upcoming celebrations that highlight how fortunate our life journey has been. Our "attitude of gratitude" paves the way for giving back to those who are struggling.

Giving Back to the Community

Morrison Foerster generously kicked off this year's Equal Access to Justice (EAJ) Campaign with a contribution of $25,000. This annual fundraising campaign supports the activities of the Dallas Volunteer Attorney Program (DVAP), which makes it possible to continue to provide and enhance legal aid to low-income people in Dallas. Since 1982, DVAP has provided, recruited, and trained pro bono lawyers to provide free legal services. DVAP received a Star of Achievement from the State Bar of Texas for the success of their virtual clinics with the help of Hunton Andrews Kurth. DVAP provides a variety of legal clinics to assist the legal needs of our Dallas community.

Volunteering to provide legal services is something that DVAP often refers to as "billable hours for the soul." I enjoy this aspect of volunteerism because I learn how to navigate a case that is not typically in my legal wheelhouse. I am empowered by the guidance of other attorneys and always leave having expanded my legal mind. I am grateful to **Michelle Alden** and **Holly Griffin** for all they do to bring access to justice.

Congratulations to **Stephanie Culpepper** and **Yuki Whitmire** who are this year's Co-Chairs of the Equal Access to Justice Campaign. The EAJ Campaign is the collective effort of lawyers, law firms, and corporations to offer help to thousands in the Dallas community by providing access to justice. These generous donations help empower residents and build stronger communities. The Charis will be assisted by Co-Vice Chairs **Rachel Morgan**, **Sarah Rogers**, and **Julie Ungerman**. And a special thank you to Honorary Co-Chairs **Ellen L. Farrell**, **Yvette Ostolaza**, and **Anthony Shoemaker**.

Laura Benitez Geisler

Laura Benitez Geisler is a stellar example of giving back. She is the DBA's 110th President and ninth female president. Laura was also the first Hispanic member to assume the role. Originally from Corpus Christi, Laura graduated from the University of Texas at San Antonio and then earned her law degree from Southern Methodist University School of Law. She is now a partner at Sommerman, McCaffity, Quesada, and Geisler, L.L.P.

Krisi Kastl, Secretary James A. Baker, and Laura Benitez Geisler

Laura has always had a passion for helping others seek justice with her personal injury work and through her work as co-chair for the 2014-2015 Equal Access to Justice Campaign. Among her many awards, Laura has been named "Best Lawyers in America" "Best Attorneys in Texas," and "Texas Super Lawyers." In 2011 The Hispanic National Bar Association honored her with its "Top Lawyer Under 40," award and she was named as one of the Top 50 Multicultural Lawyers in Dallas by the National Diversity Council.

I am so grateful to Laura. She has spent a lifetime leading and giving back and I am inspired by her drive. I met her in the fall of 2003 at the Dallas Women Lawyers Association (DWLA) Judicial Reception when I was relatively new to Dallas. I noticed her in her red suit and introduced myself. I had no idea at that moment that she was President of the DWLA and would soon become a friend.

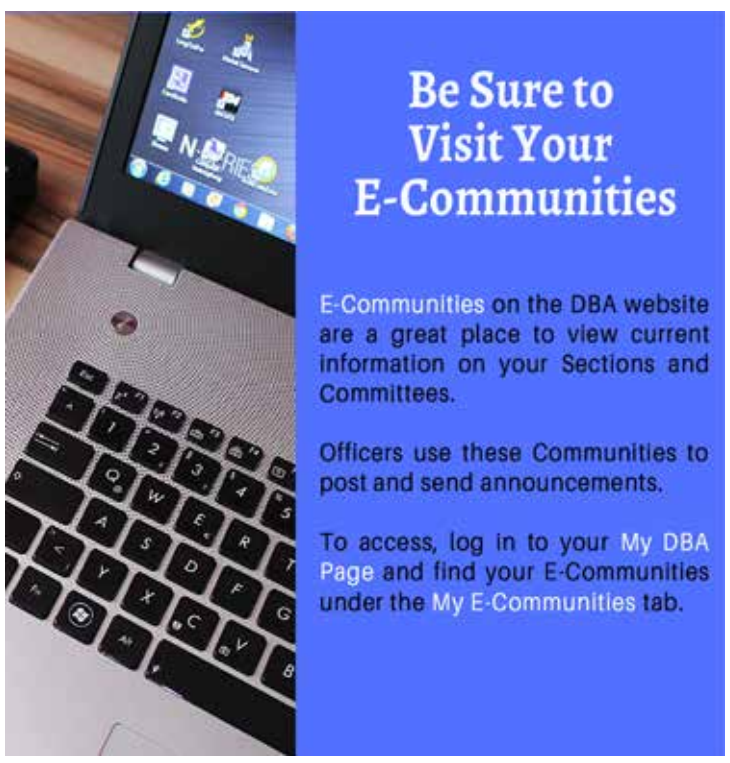
Laura Benitez Geisler

Looking Ahead

We are in a very busy time of year at the DBA. In addition to our award-winning CLEs this November, there are still celebrations to come! Mark your calendars for the DWLA Awards on November 6, the JLTLA Scholarship and Awards Gala on November 5, and the DBA and Court Staff Awards and Luncheon on November 9. Please help the DBA give back with the Sand Branch Food drive that runs November 7-December 16. Drop off your canned and non-perishable food items at the Arts District Mansion. For more details, visit www.dallasbar.org.

If you are reading this column, please know that I am grateful to you. Thank you for being a part of this journey. I am thankful for the opportunity to serve as DBA President.

With much gratitude,
Krisi Kastl



HEADNOTES
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The DBA's purpose is to serve and support the legal profession in Dallas and to promote good relations among lawyers, the judiciary, and the community.

Headnotes serves the membership of the DBA and, as such, editorial submissions from members are welcome. The Executive Editor, Editor, and Publications Committee reserve the right to select editorial content to be published. Please submit article text via e-mail to jsmith@dallasbar.org (Communications Director) at least 45 days in advance of publication. Feature articles should be no longer than 800 words. DISCLAIMER: All legal content appearing in Headnotes is for informational and educational purposes and is not intended as legal advice. Opinions expressed in articles are not necessarily those of the Dallas Bar Association.

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Kirkland & Ellis Provides Critical Support to DVAP

BY MICHELLE ALDEN

As the end of the year approaches, the Equal Access to Justice (EAJ) Campaign is in full swing. In this time of continuing economic uncertainty, **Kirkland & Ellis LLP** has graciously donated $25,500. Kirkland has a long history of supporting pro bono efforts in Dallas through the Campaign. Including this gift, the firm has donated more than $86,000 to legal aid for low-income people since 2015.

Kirkland is committed to providing legal services without charge to those who cannot afford counsel, with the goals of improving lives, bettering communities and deepening their attorneys' professional experience. Kirkland attorneys at all levels pursue pro bono matters dealing with a variety of issues such as immigration, disability rights, civil rights, prisoner rights, death penalty cases and criminal appeals, guardianship, veterans' benefits, and the representation of nonprofit organizations, among other areas. In 2021, Kirkland devoted more than 122,000 hours of free legal service to pro bono clients, including extensive support for the DVAP program, which brings together the volunteer resources of a major metropolitan bar association with the legal aid expertise of the largest and oldest civil legal aid program in North Texas.

"Participating in the Dallas Volunteer Attorney Program provides unique, hands-on opportunities to represent low-income Dallas County residents and improve access to justice in the communities that need it most. This is the heart of Kirkland's understanding of pro bono work—that we are all connected and that each small act of kindness and generosity can inspire

Jon Kelley

Rachael Rezabek

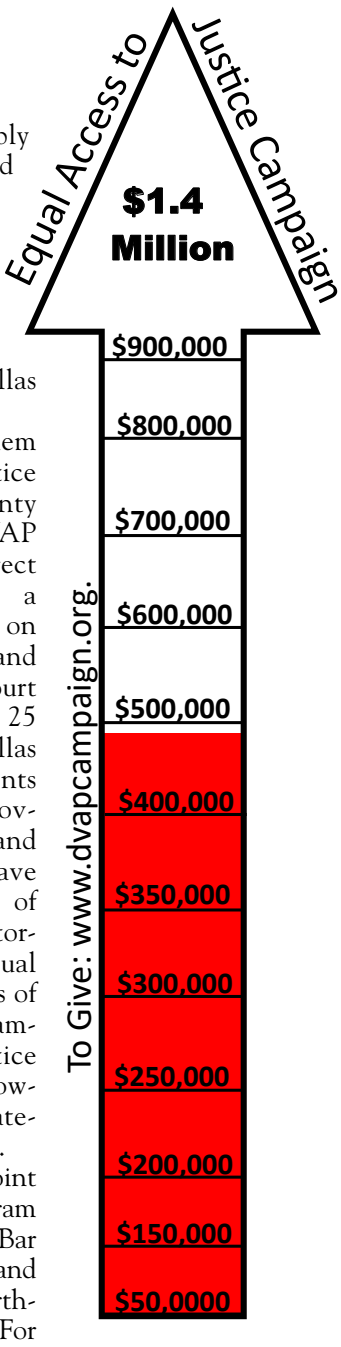
widespread and lasting change," stated **Jon Kelley**, a litigation partner in the Dallas office.

Access to legal services continues to be extremely important as people face ongoing economic challenges. In one recent case, "Juliette" needed a vehicle and found a car dealer who was selling through Facebook Marketplace. The seller claimed that the vehicle was in good condition and only needed a tune-up. Juliette test-drove the vehicle, and all appeared to work correctly. She purchased the car for $2,600, but after the purchase, she was forced to make over $3,000 in necessary repairs. Around this time, Juliette also prematurely gave birth to a child and needed reliable transportation to travel to and from the hospital. The car proved unreliable and stopped several times in the middle of the road. Juliette would not have purchased the vehicle had she known all the repairs that would be required and the ongoing safety hazards it would create.

Christopher Hanlon, an attorney at Cozen O'Connor, accepted the case for pro bono representation. Christopher filed suit against the car dealer under the Deceptive Trade Practices Act. At trial, the court found the car dealer at fault for selling the defective vehicle. A total of $5,000 was awarded to Juliette, which allowed her to seek reliable transportation.

Although Juliette's story had a satisfactory resolution, many additional families in Dallas County remain in need of legal assistance. Support for DVAP is critical to making a difference. "I enjoy the forward-thinking approach we take with DVAP in addressing the needs of the community and working together to proactively develop projects that address those needs. I find this work incredibly fulfilling, and I'm honored to be a part of it," said **Rachael Rezabek**, litigation partner in Kirkland's Dallas office.

The problem of access to justice in Dallas County is one that DVAP works to correct every day. In a country based on justice for all and access to our court system, over 25 percent of Dallas County residents live near the poverty level, and 42 percent have a slim hope of affording an attorney. With annual poverty incomes of $34,687 for a family of four, justice is a luxury for low- and moderate-income families.



DVAP is a joint pro bono program of the Dallas Bar Association and Legal Aid of North-West Texas. For more information or to donate, visit www.dallasvolunteerattorneyprogram.org. **HN**

Michelle Alden is the Director of the Dallas Volunteer Attorney Program. She can be reached at aldenm@lanwt.org.

Focus | *Immigration/International Law*

International Agreements: One Section May Prevent Problems

BY S. GEORGE ALFONSO

Without a well-drafted "Dispute Resolution Section" (including but not limited to a thorough international arbitration agreement), a party to an international contract risks the possibility that a breaching party may be able to effectively evade civil prosecution, due to the laws of the breaching party's jurisdiction, or due to that party's lack of minimum contacts with the United States. Absent a well-written Dispute Resolution Section, the breaching party may simply be unusable beyond their home country and as such, be forever beyond the reach of justice.

Jurisdictional barriers to otherwise valid contractual claims can result in the breaching party choosing to:

- Ignore a lawsuit or arbitration commenced by the complaining party in the complaining party's home jurisdiction or in an agreed arbitration venue that is vaguely defined;
- Challenge the venue of any such lawsuit or arbitration in an attempt to relocate the litigation or arbitration to the potential defendant's home jurisdiction; or,
- Engage in litigation or arbitration with no intent to pay any judgment or arbitration award.

Dispute Resolution Provisions in International Agreements

Some examples of issues which are often not contemplated in U.S. contracts, but which may arise in the Dispute Resolution Section, are as follows:

- **Required Mediation *Before* Litigation or Arbitration**: The parties are always free in any international or regional contract to agree to a cooling-off period prior to commencing litigation or arbitration, during which time they will enter into mediation, either informal or formal;
- **Venue**: The parties can agree in the Dispute Resolution Section which nations or jurisdictions litigation or arbitration may be brought in;
  - This designation may be limited to one or more nations or jurisdictions;
  - This designation may be a neutral nation or jurisdiction, or may be the nation or jurisdiction of one or more of the parties to the contract;
- **Arbitration (Exclusive or Non-Exclusive)**: The parties may agree exclusively to litigation or arbitration, but may agree to either or both, anywhere in the world.
  - **Arbitration Must be Agreed to by All the Parties to the Contract**: In order for any arbitral body to obtain jurisdiction over all the parties to any contract, each signatory must agree to the jurisdiction of the tribunal in the Dispute Resolution Section. This is the only way in which the arbitral body may assume the necessary jurisdiction to render a valid award.
    - Confidentiality: The parties may agree to confidential arbitration, whereas most jurisdictions in the world (though not all) conduct litigation in a somewhat-to-total-public forum as in the U.S.
- **Agreement as to the Procedural and Substantive Rules**: The parties should agree in the Dispute Resolution Section to the designation of what rules will control all procedural and substantive issues in the agreed-to arbitration and/or litigation;
  - **Substantive Law**
  - **Procedural Law**
  - **Procedural Law which Results in Substantive Outcome:** In certain instances, procedural law may result in definitive substantive outcomes (including rulings or an award); therefore, the parties should establish any boundaries or limitations of the agreed-upon procedural rules.
- **Service:** The parties will be bound to the jurisdictional requirements regarding service for the commencement of a lawsuit, subject to international service treaties which may apply; however, the parties may create their own definition of valid service for purposes of arbitration.
  - **Valid Service Necessary for Any Lawsuit or Arbitration:** Without a party being validly served, litigation or arbitration may not commence. Improper service may result in the challenge of a judgment or award, which could potentially overturn the final judgment or award.
- **Certification of Arbitral Award or Foreign Civil Judgment:** The parties may stipulate in the Dispute Resolution Section that a court judgment or arbitral award may be executed in a jurisdiction other than where the judgment or award was issued.

Unfortunately, companies both large and small often learn that in the area of international commercial contracts, serious ramifications can result through a failure to include a properly drafted Dispute Resolution Section in their international agreements. **HN**

S. George Alfonso, of The Law Offices of S. George Alfonso, PLLC, can be reached at sgeorge@worldwidecounsel.net.

Renew Your Dues and Join Us at the Arts District Mansion!

The new DBA Entrepreneurs in Community Lawyering Class met to connect and share ideas.

In September, the Trial Skills Section presented "Game Face Getting Heavy? High-Performers Need Help Sometimes, Too," with speakers Terry Bentley Hill, Ryan Casey Waller, Kelly Rentzel, and moderator Allie Parnell.

The Public Forum Committee hosted a Fireside Chat with Doug Parker (right) and JacqueRae Sullivan: How Our Differences Bring Us Together, moderated by Nnamdi Anozie (left).

The Senior Lawyers Committee hosted a luncheon on September 23 on the topic of Characters & Stories from Dallas' Legal Past.

The Allied Bars Equality Committee meets monthly and plans a variety of DEI programs. Don't forget to report your DEI CLE hours as part of the DBA's Diversity Challenge.

Focus | *Immigration/International Law*

Withholding of Removal as Humanitarian Alternative to Deportation

BY YOVANNA VARGAS

Not every refugee can apply for and win asylum. Consider the following story about Blanca.

Blanca is a Salvadoran woman who has suffered 15 years of domestic abuse at the hands of her husband. When she runs away the first time and attempts to enter the United States, she is caught at the border and returned immediately to El Salvador. Her husband tracks her down. He beats her unconscious in front of her children. Local police refuse to intervene. Desperate to save her life, Blanca again attempts to escape with her children to the United States. Upon her arrival, she is caught by U.S. Border Patrol. Blanca expresses fear of returning to her home country. Even though Blanca is almost certain to be persecuted if returned to El Salvador, she is not eligible for asylum in the United States. A removal order is consequently instated against her, leading to her deportation.

Blanca's story, while hypothetical, is unfortunately very similar to the reality faced by many refugees, as the U.S. government is unable to provide asylum status for everyone who seeks such relief.

But fortunately for some there is an alternative form of relief known as a "withholding of removal" or—as referred to within the United Nations—a "non-refoulment". In short, a withholding of removal is a form of protection available to individuals who demonstrate that their life or freedom would be threatened on account of certain specified grounds. To qualify, an applicant must show they face a "clear probability" of persecution, meaning the applicant is *more likely than not* to face persecution in his or her home country.

Withholdings of removal come in two types. The first, codified in the Immigration and Nationality Act (INA), prohibits the Attorney General from removing a refugee to a country where the individual's life or freedom would be threatened in certain statutorily enumerated ways on account of race, religion, nationality, membership in a particular social group, or political opinion. The second type, which is regulated by the Convention Against Torture, prohibits the removal of an individual to a country where it has been determined that the individual would more likely than not be tortured.

Individuals generally file applications for asylum and a withholding of removal at the same time. Even though these two applications may be filed simultaneously, the relief sought is different in a number of ways. *First*, asylum is a discretionary form of relief. In contrast, a withholding of removal is mandatory if the applicant meets the clear probability test. *Second*, a withholding of removal is only available as a defense to removal, whereas asylum may either be granted affirmatively or defensively. *Third*, an applicant must establish a higher standard of proof to obtain a withholding of removal than to obtain asylum. *Fourth*, a withholding of removal is granted by an Immigration Judge, not by an Asylum Officer. *Fifth*, there is no filing deadline to seek a withholding of removal, while an asylum seeker has a statutory, one-year filing deadline. *Sixth*, a withholding of removal may be available despite the applicant having prior criminal convictions, which can often preclude asylum relief for an individual. *Finally*, a withholding of removal provides fewer benefits; for example, it does not create a path to permanent residency and citizenship that asylum relief may offer.

Yet setting aside these difficulties, a withholding of removal provides many with a solid, alternative path to escape persecution at home and achieve new lives in the United States. **HN**

Yovanna Vargas is the owner at the Law Office of Yovanna Vargas, PC. She can be reached at yovanna@yvargaslaw.com.

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Focus | *Immigration/International Law*

Afghan Adjustment Act & the Search for Permanent Residency

BY NADIA SEHR KHALID

In August 2021 the U.S. military withdrew from Afghanistan, initiating a series of events that resulted in tens of thousands of U.S.-affiliated at-risk Afghans being evacuated to the U.S. While a considerable number of Afghans found safety here, a large number remain in Afghanistan with no immediate relief. After being evacuated from Afghanistan, most Afghan arrivals were legally paroled into the U.S. under a discretionary grant by the Department of Homeland Security (DHS). Parole, under the Immigration and Nationality Act (INA), allows certain noncitizens to physically enter or remain in the U.S. if, among other reasons, there is a significant and urgent humanitarian reason that merits a favorable exercise of discretion by DHS.

For Afghan arrivals, this resulted in the grant of "OAR" parole. This class of admission is seen on the entry documents (Form I-94s) of Afghan arrivals; OAR stands for "Operation Allies Refuge." After being admitted as an OAR parolee, an Afghan arrival on average was given parole validity of up to two years. This meant that for most arrivals who entered in 2021, their parole will expire in 2023. While parole remains valid, the Afghan parolee is eligible for a temporary work permit, social security card, and the right to remain in the U.S. for that duration of time.

The expiration of the OAR parole is significant for two reasons. First, it begs the question of what will happen after this temporary parole expires—will DHS automatically renew parole, or will Afghan parolees have to apply for renewals? At this time, it remains unclear whether parole renewal will be authorized in the future. The second significance is that parole is inherently temporary and therefore does not provide Afghan arrivals and their dependents in the U.S a path to legal permanent residency.

Based on the foregoing, the legal immigration question at the forefront of this discussion has become, what can place Afghan arrivals on a path to permanent residency in the U.S.? At this time, the most viable forms of relief are approved family-based petitions, refugee admittance outside the U.S., asylum, Special Immigrant Visas, or an entirely new approach contained in the pending legislation called the Afghan Adjustment Act. While family-based petitions are normally successful, they are not commonly available for Afghan arrivals, as most petitions require an existing U.S. citizen and/or Legal Permanent Resident relative.

Asylum is approved when an Applicant can show past harm or fear of future harm based on persecution due to their race, religion, nationality, political opinion or affiliation with a particular social group. If approved, an "Asylee" may apply for legal permanent residency. To an outsider, persecution should easily be established for Afghan arrivals. However, because of challenges in evidence collection, literacy, and emotional trauma, to list a few, the asylum application has become difficult to complete. This, plus an enormous backlog in processing asylum applications by the United States Citizenship and Immigration Services, has compounded the wait time for issuance of asylum receipts and interviews.

Alternatively, the Special Immigrant Visa (SIV) program was created by the U.S to protect Afghans who risked their lives to help the U.S. in Afghanistan. If granted SIV approval, an applicant could immediately apply for legal permanent residency and include their eligible dependents. The issue, however, has been that while many Afghan arrivals should qualify as SIVs, they did not receive the SIV approval prior to evacuation and are now in the long process of waiting for an SIV approval or searching for proof of employment from now defunct U.S. organizations that used to operate in Afghanistan.

Based on the above, the Afghan Adjustment Act would be the most broadly all-inclusive path to residency for Afghan arrivals in the U.S. The proposed legislation, more commonly known as "AAA" or "Triple A," mirrors technical requirements of previous adjustment acts; namely that they must be citizens or nationals of their home country, they must have been inspected and admitted to the U.S. before the date of the enactment of the Act, and they must have been paroled into the U.S. during a specific period of time. Immigration practitioners have seen similar language in similar past legislation, such as the Cuban Adjustment Act.

As of now, the future of AAA remains unknown. If Congress passes it, AAA will allow all Afghan arrivals under OAR to apply for permanent legal residency and, thereafter, citizenship in the future. On the other hand, if Congress does not pass AAA, Afghan arrivals will have to continue applying for multiple forms of immigration relief in the hopes of securing a pathway to permanent residency. While the passage of the Act remains uncertain, we know for sure that the Afghan evacuee crisis will require unique, adept, and broadly encompassing responses from resettlement countries going forward. **HN**

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Focus | *Immigration/International Law*

Enforcing the Affidavit of Support in Texas Courts

BY VISHAL CHANDER

A common question that civil litigators ask immigration lawyers is whether the USCIS Form I-864, Affidavit of Support, creates a private right of action that can be enforced against the sponsor. The consensus supports enforceability of the Affidavit of Support in civil litigation, including divorce proceedings, before Texas courts.

What is the I-864 Affidavit of Support?

The I-864 Affidavit of Support was created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208. IIRIRA makes anyone seeking lawful permanent resident status as an immediate relative, a family-based immigrant, or an employment-based immigrant inadmissible where a relative owns a significant interest in the employer. INA 212(a)(4)(C), 8 U.S.C. 1182(a)(4)(C). IIR\IRA added the Affidavit of Support requirement to overcome the public charge ground of inadmissibility. INA 213A, 8 U.S.C. 1183a. *See* 62 FR 54346 (Oct. 20, 1997).

INA 213A states the Affidavit of Support is a contract where the sponsor agrees to provide support to maintain the sponsored foreign national at an annual income that is not less than 125 percent of the federal poverty guidelines. The contract is enforceable against the sponsor "by the sponsored alien, the Federal Government, any State (or any political subdivision of such State), or by any other entity that provides any means-tested public benefit." Any federal or state court may have jurisdiction. INA 213A(1), 8 U.S.C. 1183a(1), *See also* 8 CFR 213a.2(d). The Affidavit of Support remains enforceable until the foreign national becomes a United States citizen or the alien has worked or can be credited as earning 40 qualifying quarters of coverage as defined by the Social Security Act. INA 213A(2) – (3), 8 U.S.C. 1183a(2) – (3).

Enforcement of the Affidavit of Support

In re Marriage of Kamali and Alizadeh, 356 S.W.3d 544 (Tex. App.—Texarkana 2011, no pet.) is the leading Texas case regarding the enforcement of the Affidavit of Support in divorce proceedings. The Sixth Court of Appeals found that the I-864 Affidavit of Support created a contractually binding obligation on the U.S. citizen spouse to support the lawful permanent resident spouse at the level of 125 percent the Federal poverty line. The court held that the trial court erred by limiting the support to 36 months and that the obligation ceased only upon the occurrence of the terminating events set out in the authorizing statute.

In *Yuryeva v. McManus*, No. 01-12-00988-CV (Tex. App.—Houston [1st Dist.] Nov. 26, 2013, pet. denied), the lawful permanent resident spouse appealed the trial court's final divorce decree, challenging venue, jurisdiction, child support, division of the marital estate, and alleging court bias. She argued that the trial court erred in failing to impose the obligations under the Affidavit of Support in the divorce decree. The First Court of Appeals found that a sponsored immigrant may bring an action to enforce an Affidavit of Support in any appropriate court. The court held the trial court did not err because the appellant failed to raise enforcement of the Affidavit of Support in her divorce petition. [what was trial court's ruling???]

In re A.M.H. and R.Q.D., No. 14-17-00908-CV (Tex. App.—Houston [14th Dist.] Sep. 17, 2019, no pet.), the sponsored spouse appealed enforcement of a prenuptial agreement. In one issue, she argued the prenuptial agreement was unenforceable because of the Affidavit of Support. The Fourteenth Court of Appeals found that an Affidavit of Support creates a legally enforceable contract between the sponsor and the sponsored immigrant. The court noted the duty to support under the Affidavit of Support continues until a terminating event. The court held that the trial court did not err by enforcing the premarital agreement because there was no evidence of a failure to support during the marriage and because the sponsored immigrant was a United States citizen, a terminating event under the statute, at the time of the divorce proceedings.

In *Beringer v. Beringer*, No. 04-19-00097-CV (Tex. App.—San Antonio Apr. 1, 2020, no pet.), the trial court enforced the obligations under the Affidavit of Support in the final divorce decree starting on the date of the divorce. The sponsored immigrant argued that she was owed support obligations under the Affidavit of Support during the period between separation and the date of divorce. Citing *Yuryeva v. McManus*, Fourth Court of Appeals held that the trial court did not err because the sponsored immigrant's pleadings did not raise the issue before the trial court.

The question of whether the I-864 Affidavit of Support can be enforced before Texas courts in divorce proceedings appears to be settled. In defending against an enforcement claim, practitioners should look to terminating events and mitigation of damages under the statute. **HN**

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Negotiating with Zeal: Five Ethics Rules to Keep in Mind

BY JEANNE M. HUEY

Statements made in the midst of hard-hitting negotiations to resolve a lawsuit for your client can inadvertently cross the line between tough talk and unethical or even illegal conduct. While most lawyers know to stay far away from the actual crime of extortion, there are also five Texas disciplinary rules to take into account each time we negotiate on our client's behalf.

While there are no specific rules addressing a Texas lawyer's role as a negotiator, the Preamble to the Texas disciplinary rules reminds us that, in negotiation, we are to "*seek a result advantageous to the client but consistent with requirement of honest dealing with others*." This obligation to deal honestly with others is the focus of Rule 4.1. Rule 4.1 forbids lawyers from knowingly making any false statement of material fact or law to a third person in the course of representing a client. Whether a particular statement is one of "material fact" will depend on the circumstances. Keep in mind, however, that there are no special rules or exceptions to the prohibition against these kinds of false statements for discussions made during negotiation.

Rule 4.04 is the clearest disciplinary rule we have in Texas concerning threats during negotiations and the crime of extortion. It expressly forbids a lawyer from presenting or threatening to present criminal or disciplinary charges solely to gain an advantage in a civil matter. Rule 4.04 differs from many other state's disciplinary rules and the ABA Model Rules on this issue. It therefore serves as a good reminder to be cognizant of and in compliance with every disciplinary rule governing your conduct, taking into account not only the relevant court (state or federal) and its location but also the physical location of each of the lawyers and clients.

Rule 3.1 guards against frivolous or groundless threats. It is violated any time a lawyer asserts an issue during a proceeding or makes a threat to do so that is not well founded in fact and law, which would likely include threats made during negotiation to bring criminal charges or to disclose embarrassing or proprietary information other than through the introduction of admissible evidence in a legal proceeding.

Negotiation can also go wrong when lawyers improperly seek to benefit themselves or their firm when trying to settle a client's claim. Even without improper conduct, every negotiation that involves both money to the client and money to the lawyer—often in the form of a lump sum offered by the opposing party—poses the risk of a direct conflict of interest with the client under Rule 1.06(b)(2). When negotiating in this kind of situation, it is imperative to make sure that the client understands how a lump sum settlement will be divided under the fee agreement and to discuss how various outcomes will affect their recovery and your fees as negotiations proceed. It is also a good idea to make sure the client understands that your own interest in the outcome of the negotiation is not diminishing your willingness to bargain for what is best for them.

Finally, Rule 8.04 cannot be overlooked in conjunction with negotiation. It forbids a lawyer from committing a serious crime or criminal act that reflects adversely on the lawyer's honesty or trustworthiness and prohibits conduct involving dishonesty, fraud, deceit or misrepresentation, among other things. It also makes it a rule violation to violate any of the other disciplinary rules which may result in a harsher sanction than any single rule violation otherwise might.

A cautionary tale demonstrating how tough talk can morph into something else during negotiation is detailed in a recent California state court opinion -*Falcon Brands Inc. v. Mousavi & Lee, LLP*. In the *Falcon* opinion, the court walks through the progression of the threats made during negotiations by one of the lawyers in the case and describes how a basic demand for settlement moved to implied and then explicit threats and finally crossed over to the crime of extortion.

Most lawyers are justifiably passionate about getting the best deal that they can for their client during negotiations. Unfortunately, this same passion can cause their conduct to inadvertently cross over into something that they never intended—a disciplinary rule violation or even a crime. To avoid either of these outcomes, it is important to both know the rules and keep a watchful eye on the line to make sure it does not get crossed either by you or someone on your team. **HN**

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On September 9, the judicial investitures of Hon. Ada Brown and Hon. Brantley Starr, of the U.S. District Court for the Northern District of Texas, was held at the Arts District Mansion. More than 700 were in attendance. Judge Brown (top) is shown with the Chief of her Choctaw tribe, and Judge Starr (bottom) is pictured with his family while he is being sworn in.

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Emily Lesowski graduated cum laude from Baylor Law, and clerked with Turner McDowell Rowan each summer during law school. After earning a BS in Political Science at The University of Oregon with honors in just three years, Emily gained invaluable experience working for a year in the Family Law Facilitator office of her local county courthouse.

Augusta Tostrud

Augusta was born and raised in Coppell, Texas, and earned her Juris Doctor degree at the Southern Methodist University Dedman School of Law. She graduated magna cum laude from Baylor with a degree in Political Science. Augusta's passion for family law was sparked while working at the VanSickle Family Law Clinic as a student, assisting low-income clients in divorce matters.

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Column | Ethics

Cross-Border Application of Attorney-Client Privilege

BY DAVID RITTER

As U.S. businesses expanded overseas to new regions over the past several years, commercial disputes have arisen among U.S. and foreign counter-parties, and therefore the question of what information is privileged deserves close attention. The attorney-client privilege is not always recognized to the same scope in all jurisdictions. Lack of attention to the details of the privilege may result in the disclosure of information that one believes absolutely protected.

Most foreign countries, the federal rules, and all states recognize an attorney-client privilege, the scope of which can vary significantly. Under the federal rules, privilege in civil matters is governed by the applicable state law. Some countries, such as China, have a radically limited attorney-client privilege. Others have a more robust attorney-client privilege than many states. For instance, Canada's solicitor-client privilege is treated as a substantive right rather than a procedural evidentiary rule. Civil law jurisdictions may also have better protection for privileged communications, not necessarily because of a broader privilege, but because of limited pretrial discovery. Accordingly, when dealing with a foreign counter-party, attorneys should be cognizant that what is thought to be privileged may not be, and should educate themselves on the procedures necessary to protect otherwise privileged information.

Governing Law Clauses

When representing a client in a transaction involving a foreign counter-party, ethical duties require lawyers to exercise caution when recommending the application of law in a jurisdiction where the attorney is not licensed to practice. Further, even if the attorney has or can obtain a sufficient understanding of the substantive law governing the parties' contractual rights, the parties' rights as to the attorney-client privilege should not be overlooked.

The choice of one forum's law can assist the parties in determining the application and scope of the attorney-client privilege. Typically, the law of the state chosen by the parties can legitimately be expected to govern privileges—until it isn't. When one party can assert that the application of a privilege is contrary to a fundamental law or policy of a state (which is not always explicitly defined), the scope and extent of the asserted privilege will be placed in dispute.

For instance, in the European Union and many other European countries, communications between an in-house lawyer and its client do not enjoy the same level of protection as the communications between a lawyer in private practice and the same client. If a contract is governed by the law of such a European country, it may be easier to obtain communications between in-house lawyers and the company client. Further, if the contract is governed by Texas law, but is proceeding in a court that does not recognize in-house attorney-client communications as being privileged, a party could argue that the assertion of attorney-client privilege is against a fundamental law or policy of a country related to the dispute. To respond to this assertion, a court may have to look at principles of comity or the "touch-base" principle, which would apply home state privilege law to privileged information that "touches base" with the home state, and the other country's privilege law when it relates "solely" to the other country to the extent consistent with the forum state's public policy. Unfortunately, these principles employ a circular logic that can lead to unpredictable outcomes. Thus, an attorney should be cognizant of the risks surrounding privilege disclosure at the outset.

Discovery Limitations

Attorneys should be cognizant that pre-trial discovery limitations, particularly in civil law jurisdictions, may protect privileged information or prevent disclosure. When a U.S. party seeks discovery from a foreign party, it may have to consult the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, which can be a cumbersome and expensive way to obtain information.

Parties proceeding in a foreign country have a lesser burden when seeking discovery from American parties, so long as they can utilize 28 U.S.C. § 1782, which is applicable in both civil and criminal matters. Discovery is generally easier to obtain because the foreign counter-party does not need to have first requested discovery from the foreign (non-US) tribunal, and the foreign party may be able to conduct discovery prior to filing suit. Be aware that the Supreme Court recently prohibited the application of section 1782 to disputes pending in private arbitration. *ZF Auto. US, Inc. v. Luxshare, Ltd.*, 142 S. Ct. 2078, 2083 (2022).

Identification and Encryption

As with any other information that an attorney believes to be confidential, the attorney should identify, through use of watermark or other label, the documents that are privileged. The attorney should also consider encrypting electronic information to prevent inadvertent disclosure or malfeasance. These efforts will further evidence the intention of the attorney and client that the attorney-client privilege should attach to the communications and may prevent the disclosure of confidential materials. **HN**

David Ritter, of Ritter Spencer PLLC, can be reached at dritter@ritterspencer.com.

Native American Heritage Month

On August 3, 1990, President George H. W. Bush declared the month of November as **National American Indian Heritage Month**, thereafter commonly referred to as Native American Heritage Month. First sponsor of "American Indian Heritage Month" was through the American Indian Heritage Foundation by the founder **Pale Moon Rose**, of Cherokee-Seneca descent and an adopted Ojibwa, whose Indian name Win-yan-sa-han-wi "**Princess of the Pale Moon**" was given to her by Alfred Michael "Chief" Venne.

NATIVE AMERICAN HERITAGE MONTH

Focus | *Immigration/International Law*

10 Things a Non-Immigration Attorney Should Know

BY BELINDA ARROYO

Immigration law has an ever-evolving landscape that can be both interesting and challenging for those who practice in the field. According to the American Immigration Council, as of 2019, there were 44.9 million immigrants in the United States—a whopping 14 percent of the population. These statistics suggest that many attorneys are prone to encounter immigration matters in their practice, even if they are not specialized immigration attorneys. Below are 10 pointers to consider should an immigration law issue arise in your next case.

1. Noncitizens Can Retain Custody of Children. A parent's legal status does not prevent him or her from seeking or retaining custody of a child. When parents are removed from the United States, they can choose to take their children with them if no custody order prevents them from doing so.

2. The Criminal Plea-Bargaining Stage of a Criminal Case Is the Time to Seek Advice. As noted in the Supreme Court decision *Padilla v. Kentucky*, 559 U.S. 356 (2010), the "accurate legal advice for noncitizens accused of crimes has never been more important." A criminal plea made by a noncitizen can have devastating effects on the rest of his or her life. Thus, the plea-bargaining portion of a criminal case is the most important time to seek counsel from an experienced immigration attorney.

3. Texas Does Not Issue Driver's Licenses to Noncitizens Without Proof of Status. The State of Texas has very specific requirements for the issuance of driver's licenses to noncitizens. A noncitizen's driver's license may also expire when his or her supporting immigration documentation expires.

4. There Is an Annual Limit on Visas. The United States sets an annual limit on family-based visas of 226,000 per year. The government issues a monthly report called the Visa Bulletin with information on current visa waitlists. Some applicants face little to no wait time. Other applicants have waited 22 years or more.

5. Residency Comes Before Citizenship. In most cases, a noncitizen must obtain Legal Permanent Residency before they can seek citizenship. Once a Legal Permanent Resident, a noncitizen who is married to a U.S. citizen can seek citizenship after three years. Legal Permanent Residents without an American spouse must wait five years prior to seeking citizenship.

6. 90 Day Fiancé Is Based on Real Immigration Laws. The show *90 Day Fiancé* is based on law that gives a U.S. citizen and his or her noncitizen fiancé a 90-day time limit to marry upon entry into the United States on a K-1 visa. But the K-1 visa application process is not as simple as the show might suggest. Noncitizens applying for K-1 status must first satisfy a number of requirements with the consulate before they enter the United States.

7. Citizenship Can Be Automatic for Some Children that Are Foreign Born. The immigration laws of the United States provide mechanisms for a child born in another country to gain automatic citizenship by virtue of a parent's citizenship, as long as certain residency requirements are met prior to the child's birth.

8. **Backlogs Have Grown Extensively During the Pandemic**. The immigration system was severely backlogged prior to the pandemic. The backlog has continued to grow since then. There are now extremely long wait times in every area of the system.

9. Legal Permanent Residents Do Not Lose Their Status if Their Card Expires. Green card holders, as they are often referred to, do not lose their status when their cards expire. Green card status is permanent unless taken away by an Immigration Judge or abandoned by the noncitizen by virtue of a long absence outside of the country.

10. Reach Out to an Experienced Immigration Attorney. The Dallas Bar Association has a section devoted to Immigration Law. When in doubt, reach out to one of your colleagues to help with your immigration law questions. **HN**

Belinda Arroyo, of Belinda Arroyo Law Office P.L.L.C., can be reached at barroyo@arroyolawoffice.com.

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Focus | *Immigration/International Law*

Immigration Myth Busters

BY JIROKO LOPEZ

As an immigration law practitioner, I am often asked how an undocumented person can obtain immigration status. Below are some of the most common questions that arise. My hope with this article is to address these questions and dispel misconceptions that seem to exist about the U.S. immigration system.

Q: Can an undocumented person obtain immigration status simply because he or she has lived in the United States for 20 years, has no criminal history, pays taxes, and has U.S. citizen family members?

A: There is no affirmative path to obtain a green card solely based on physical presence in the United States. This is the case even if the person has no criminal history, positive tax equities, and U.S. citizen family members.

Q: Can undocumented parents of a U.S. citizen child automatically obtain immigration status?

A: No. Immigration status for undocumented parents may not be automatic. A U.S. citizen child can petition for an undocumented parent to obtain residence, but if the parent entered unlawfully, the parent must request a waiver for the unlawful presence.

In Spanish, this waiver is commonly referred to as a "perdon" or forgiveness. Through such a request, the intending immigrant asks the Department of Homeland Security to forgive his or her prior unlawful entry. To qualify for that forgiveness (waiver), the parent of the U.S. citizen child must separately prove that the parent has a U.S. citizen or green card-holding spouse or parent that will suffer "extreme hardship" without the applicant's presence in the U.S.

Q: Can you give an example of how the unlawful presence waiver works?

A: For example, you and your spouse entered the U.S. 22 years ago without a visa. Your parents live in your home country and have no U.S. immigration status. You have three U.S. citizen children. Your oldest U.S. citizen child turns 21 (age of majority in immigration law) and can petition for you. In addition to the petition, you must include an unlawful presence waiver to forgive your entry without a visa to apply for residence.

However, you do not qualify to request the waiver, as neither your spouse nor parents have immigration status. You cannot get residence even though you have a U.S. citizen child. A parent-child relationship is not sufficient for a residence process if the parent entered the U.S. without a visa. The parent must also have a spouse or parent request a waiver in order to qualify for residence.

Q: Can a U.S. citizen child help a parent who entered the U.S. with a visa obtain immigration status?

A: Potentially. If a parent enters the United States with a visa and waits for his or her citizen child to turn 21 and petition, the parent may be able to obtain residence. A full consultation would be needed to confirm that the parent otherwise qualifies.

Q: Can I obtain immigration status for my nanny as her employer?

A: An employer can petition on behalf of an employee only if that employee currently has lawful status. If your nanny entered the United States without a visa or her visa status expires, the nanny would need to proceed through the consular process in her home country. This means that your nanny must first return to her home country and request a waiver at a U.S. Embassy. Unfortunately, in practice, an embassy is unlikely to approve such a petition due to the nanny's prior unlawful presence accumulated in the United States. A denial by an embassy would result in your nanny being stuck in her home country with little to no prospects of lawfully returning to the United States.

There is also an au pair visa for immigrants between the ages of 18 and 26. But this type of visa provides no path to residence.

Q: What paths exist for an undocumented person to obtain U.S. immigration status?

A: There are mainly three paths to immigration status. There is family-based immigration, in which U.S. citizens can petition for their children, parents, spouses, and siblings. Similarly, green card holders can petition for spouses and single children. There are also victim-based visas, which may be obtained for (a) victims of violent crime that cooperate with law enforcement (U-visa), (b) minors who have been abused, abandoned, or neglected by one or both parents (juvenile visa), (c) victims of domestic violence married to a resident or citizen (VAWA), and (d) victims of human trafficking (T-visa). Finally, defendants in immigration court proceedings may seek immigration status as a form of defensive relief.

Q: How long does an immigration process take?

A: The length of each applicant's immigration process can vary significantly. An employer petitioning an employee may use premium processing to process an employment visa in 15 days. However, a U.S. citizen petitioning for a married son or daughter from Mexico must wait 24 years. There is no premium process for family petitions. **HN**

Jiroko Lopez, of Lopez & Freshwater, PLLC, can be reached at lopez@dfwvisa.com.

Column | *Veteran's Resources*

Leave No One Behind – a Call to Arms

BY GEORGE WHITE

When I enlisted in 1969 war was raging in Southeast Asia. Unlike today, the concept of Leave No One Behind was an unspoken one, but one we adhered to religiously. It has become a motto for the services today, but for us, in that generation, it was a reality and a necessity. The fact that we have aged, separated from the service, built careers, lives, families has not dulled that sense of duty. As has been popularized on t-shirts, our commitment had no expiration date. Our vow to help our brothers and sisters had no expiration date. Many of us just did it ourselves, in our daily lives, in our practice, or in our own way with various veterans' organizations or service clubs.

Then, a Marine, as State Bar President, created an initiative called Texas Lawyers for Texas Veterans (TLTV). I am sure his thought was to honor that pledge. It made sense. Create an organization of lawyers to help those veterans who needed legal help. It did not matter if they could afford it or not. Unlike many legal aid programs, TLTV does not have income requirements. One needs only a DD214. It acted as a magnet for lawyer vets.

Our generation had many lost veterans. Many had mental health issues, financial issues, and family issues. The VA was not going to help except maybe for medical issues, and until recently, not even that. Now we have a new generation of veterans that need our help. Where do they go for help? Who do they see? Who do they trust? Us. Those who served. Those who need us are on the battlefield of life. Lost, and many times alone, and nowhere to go. No place to find answers, help, guidance, a hand. TLTV exists for that reason.

For me, TLTV helps me do that better than I could do it myself. It was a no-brainer. For those brothers and sisters in TLTV who served, it was also a no-brainer. I have not yet found a veteran who said no when asked to assist in helping. It is more than our duty, but our honor to help. Our pledge of Leave No One Behind did not end with our separation. For us, it continues today. While the ranks of TLTV are populated with many who did not serve but saw the need, were friends and family of service members, or just wanted to help, there is an unflinching core of veterans who answered the call.

However, we need more to answer the call and allow us to help more veterans. While participating in Veteran's Day parades, the American Legion or VFW is fun, and I do that too, actually sitting down with a veteran in need and helping is so much more fulfilling. You see it in their eyes. Their change in mood. They know they are not alone. They see and feel it. Someone -—a brother or sister veteran—is actually doing something to help. It changes their lives many times and, in many ways, but WE are rewarded more than they. We have fulfilled our duty, our pledge, when we joined. Leave No One Behind.

As the slogan goes… WE NEED YOU!!! Feel good and join us in helping our brothers and sisters in need. An hour or two a month goes a long way, and you can help Leave No One Behind. **HN**

George White, a solo practitioner, is a Veteran, JAG at American Legion China Post 1, an American Legion Rider, and active in TLTV Tarrant County. He can be reached at gwhitepc@aol.com.

Focus | *Immigration/International Law*

EB-5 Immigrant Investor Program Re-Authorized Under ERIA

BY BRENT HUDDLESTON AND KRISTEN CASTRO

The EB-5 investor visa program grants green card status to foreign investors who satisfy certain criteria. Congress created the EB-5 program in 1990 to benefit the U.S. economy by attracting investments from qualified foreign investors. Under the program, an investor is required to show that their investment created at least 10 new jobs. The EB-5 program has drawn tens of billions in capital investment to support U.S. businesses and create hundreds of thousands of job opportunities for American workers. Throughout the process, EB-5 investors are subject to the same background checks and national security screenings as applicants in any other visa category, and their ability to eventually apply for citizenship is subject to the same criteria as other visa holders. In every case, EB-5 investors must be able to demonstrate a lawful source and path of the funds to be invested, adding a layer of security that is not required by any other category of visa petitioners. If their application is approved by United States Citizenship and Immigration Services (USCIS), EB-5 investors receive a conditional green card that is valid for two years. In order to receive a permanent green card, the investors must demonstrate that the legally required economic benefits flowing from their investments have been achieved.

In 1992, Congress permitted the designation of Regional Centers (RC) to pool EB-5 capital from multiple foreign investors for development projects within a defined geographic region. Today, 95 percent of all EB-5 capital is raised and invested by RCs. In June 2021, authorization for the RC program lapsed prior to Congressional re-authorization and the program came to a halt. During this period, USCIS ceased processing initial investment petitions (I-526), petitions to remove conditions on conditional green cards (I-829), RC applications (I-956), and consular interviews for investors abroad.

On March 15, 2022, the Biden administration enacted the *EB-5 Reform and Integrity Act of 2022* (ERIA). ERIA impacts existing and future investors, RCs, project developers, and promoters with changes that include:

- **Investment Amounts**: For all new filings, the minimum investment is $1.05M (increased from $1M). For investments in a Targeted Employment Area (TEA) that is either rural or has high unemployment, the minimum investment level is reduced to $800,000 (increased from $500,000).
- **Set Asides**: Separate from investment amounts, investor visas are "reserved" each fiscal year with 20 percent allocated for rural, 10 percent for high unemployment, and 2 percent for infrastructure. This is a major benefit for Chinese and Indian investors who previously had to wait 10-15 years for their green cards following an investment because of backlogs based on individual country quotas.
- **Concurrent Filing of Green Card Application**: Previously, investors could not request a green card until their I-526 investment petition had been approved. Now, if investors and their immediate family are already in the U.S. in a temporary immigration status, they can concurrently file for their green card without waiting the two-plus years for their I-526 petitions to be adjudicated. ERIA also provides protections to investors under INA Section 245(k) by forgiving up to 180 days of visa overstays when they apply for a green card.
- **RC Burdens**: Several new restrictions were placed on RCs including the requirement to undergo USCIS audits every five years, sharing annual statements with investors, requiring employment of a fund administrator, limiting RC involvement to citizens and green card holders who must all undergo biometric and background checks, and a $10,000-$20,000 annual fee to support the new integrity fund.

After the program resumed, USCIS unilaterally posted a notice on its website stating that all existing RCs had been de-certified and would need to re-apply for certification. Based on processing times, USCIS would have taken 10+ years to process applications for the existing 631 RCs, so a class action lawsuit was filed and a preliminary injunction was issued which enjoined USCIS from de-certifying all RCs. USCIS then issued new instructions stating that RC investors could not file until a receipt notice was received for project applications. Within a two-month period, USCIS issued zero receipt notices, spurring additional litigation.

On August 25, 2022, multiple EB-5 industry stakeholders entered into a settlement agreement with USCIS which protected EB-5 investors and re-authorized previously approved RCs, effectively signaling that the EB-5 program is fully back in business. The key stipulations of the settlement are:

- Previously authorized RCs retain their authorization;
- If not previously submitted, RCs must submit the appropriate application and an $18,000 filing fee to maintain authorization;
- Previously authorized RCs may immediately file project applications;
- The failure of a previously approved RC to file a Form I-956 application or amendment will not, standing alone, be a basis for USCIS to deny an investor's I-526 or I-829 petition; and
- USCIS will update its website, forms, and instructions to conform to the terms of the settlement agreement.

Under the new regulations, all EB-5 cases submitted before the new program authorization expiration date in September 2027 will be grandfathered and processed by USCIS, which provides added comfort to new potential foreign investors who may have been deterred based on the recent uncertainty surrounding petition processing. **HN**

Brent Huddleston and Kristen Castro, of Huddleston Law Group, can be reached at brent@huddlawgroup.com and kristen@huddlawgroup.com, respectively.

Lawyers Need to Know About the GDPR

BY JOHN LEHMAN

Created by the European Parliament, the goal of the General Data Protection Regulation (GDPR) is to ensure businesses protect the personal data they acquire from "data subjects" in the European Union (EU). Here is a breakdown of everything you need to know about it and what steps you can take to protect your clients' data within your legal practice.

What is the GDPR?

The GDPR defines "data subject" as "an identified or identifiable natural person," which means any person who provides their personal data to a business. When you create an account on e-commerce sites, opt-in to an email newsletter, or even fill out an intake form at a doctor's office—and in the case of your clients, your law firm—you are providing your personal data to a business.

These businesses are called "data controllers", which the GDPR defines as "the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of processing personal data."

What is Considered Personal Data?

- Personal data protected by the GDPR includes (but isn't limited to):
- Full names
- Residential addresses
- Email addresses
- Identification numbers (driver's license, social security number, etc.)
- Banking information
- Web data (GPS location, cookies, IP addresses, etc.)
- Medical records
- Race & Ethnicity
- Sexual orientation
- Political affiliation

How Does the GDPR Affect Me?

International agreements between various countries and the EU mean the GDPR affects businesses worldwide. Even if you never work with a client in the EU, the practices required for GDPR compliance can significantly improve your firm's cybersecurity systems. Regardless of location, any business that collects personal data from customers in the EU must be compliant with the GDPR.

What Do I Need to do to Become Compliant?

Privacy policies. Under the GDPR, your privacy policy must contain simple language that clearly states how you collect your clients' data and what you do with it. You must also disclose whether your firm will share a client's data with a third party and how long you intend to keep their data. Your privacy policy must also be easily accessible on your site or made readily available upon request.

Demonstrable consent. The GDPR also requires businesses to obtain explicit consent from a customer in the EU before utilizing their data for business. For example, if you had a client's email address and wished to send them an e-newsletter, you must be able to demonstrate that your client wanted you to send it to them. This can often be achieved by adding a clause to your client intake forms or a box to your online forms that respondents can check to indicate consent.

Expanded rights. New rights granted to customers in the EU under the GDPR include the Right to Access and the Right to be Forgotten. The Right to Access allows individuals in the EU to obtain their data from a data controller upon request, at no cost. The Right to be Forgotten will enable individuals in the EU to request any data controller who possesses their data to purge it from their records.

Data management. You must know where your clients' data is so you can retrieve it in case of a request. If this data is stored on your machines, ensure they are stored in an encrypted digital locker and can only be accessed by authorized personnel. If any data is handled by a third party, such as an online payment processor, you will need to reach out to them to retrieve it if you receive a request.

Your firm is also responsible for confirming that any data request is legitimate. This can be accomplished by checking the requestor's identity against personal data you've already legally obtained, such as asking them to recite their home address or phone number. If you cannot verify that the request is legitimate, then the request must be denied.

Though the GDPR may seem imposing, most professional service firms have nothing to fear. Your firm will likely be in the clear as long as you evaluate current data security practices (and adjust where necessary), adhere to new consumer rights, and maintain transparency about personal data usage. **HN**

John Lehman is a Content Writer at LawPay. Learn more about LawPay's online payment solution built specifically for the legal industry at lawpay.com/dallasbar.

From the Bench

STEVEN AUTRY

Steven Autry, Chief Magistrate, Dallas County Felony District Courts

Why did you decide to become a Judge?
Being a Magistrate Judge allows me to be involved in all aspects of the criminal justice process starting with the arrest and arraignment of a person all the way to trial. I was honored to be appointed by the Dallas County Felony District Judges and have been serving since 2011.

Why do you participate in Bar programs?
The Dallas Bar Association allows me to feel connected to other lawyers in different practice areas. I feel a sense of community being a part of something bigger than myself.

What are you currently reading?
Robinson Crusoe, by Daniel Defoe. I love reading (or re-reading) classic novels.

Fun fact about you:
I can juggle and speak Spanish and Portuguese…just not all at once!

Save the Date

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Join the Challenge

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DBA WE LEAD

WOMEN EMPOWERED TO LEAD

APPLY NOW!

DBA WE LEAD (Women Empowered to Lead in the Legal Profession) is a leadership program designed to address the challenges of high-performing women who have practiced law for 8 to 15 years.

WHO

DBA WE LEAD is accepting applications from women lawyers who graduated from law school between 2007 and 2014, have established themselves in their careers and communities, and want to further explore advancement opportunities and leadership skills.

WHEN

DBA WE LEAD runs from February 2023 to November 2023 and includes four half-day sessions with mandatory attendance.

Cost: $1,000
Application Deadline: **December 1, 2022**
Need-based scholarships are available

For information and online application visit:
www.tinyurl.com/2023DBAWELEAD

Questions? Contact Judi Smalling at jsmalling@dallasbar.org.

DVAP's Finest

KRISTIAN MCCRAY

Kristian McCray is a sole practitioner.

1. How did you first get involved in pro bono?
After relocating to Texas, I desired to find a way to give back and serve the community. I found out about DVAP and the program provided all the opportunities needed for me to do just that.

2. Describe your most compelling pro bono case.
The most compelling case to date would be an estate planning case for a lady who had recently lost her mother. She decided to get her affairs in order because a significant amount of turmoil and stress presented itself to her and her family after her mother passed without a will. When I first spoke with her, she was overwhelmed. By the end of our conversation, she was at ease and happy to know this aspect of her life would be taken care of while she focused to resolve her mother's estate. Being able to provide what some may consider a small sense of security makes a difference; but for me, I have found such opportunities to be priceless.

3. Why do you do pro bono?
True joy and happiness are not found in a life lived for one's self, but rather a life of giving of one's self for others. Access to legal services should not be denied to anyone because of lack of financial resources. Therefore, DVAP plays an integral part in allowing attorneys like myself to come along in service to our community. It is a meaningful experience to help others in a time of need with no expectation of something in return.

4. What impact has pro bono service had on your career?
It makes my career purposeful on different level. I am blessed to be a blessing. It truly is better to give than to receive, so I use my skill set to give to those in need which produces a greater level of satisfaction for me.

5. What is the most unexpected benefit you have received from doing pro bono?
There are many unexpected benefits when serving with great people who give of themselves for the betterment of others. However, I was volunteering at the Veterans Clinic and had the opportunity to speak with a non-traditional recently licensed attorney who was also a veteran. As we talked, he shared some of his life accomplishments with me and I was very inspired. We continued to talk, and I shared with him my military background. Prior to us wrapping up that day, he shook my hand and gave me a military coin. His words of inspiration spoke to the desire I had to get involved in pro bono initially, and there was also a reassurance to keep giving all I can whenever I can. What we do in serving is far bigger than total of our life existence.

Pro Bono: *It's Like Billable Hours for Your Soul.*

To volunteer or make a donation, call 214/748-1234, x2243.

DVAP
Dallas Volunteer Attorney Program

Focus | *Immigration/International Law*

Reaching Foreign Assets of Texas Judgment Debtors

BY JAMES W. VOLBERDING, CPA

Your client has won a Texas judgment against a person or corporation. The non-exempt assets of the judgment debtor, however, are in another country. You are faced with the issue of how to reach the debtor's foreign assets to satisfy your judgment. While there are a number of hurdles to such an endeavor, you have not reached a dead end. The law provides a potential avenue for recovery in the form of a statutory receivership.

The first step in the statutory receivership process is to file a motion for appointment of a "receiver" over the judgment debtor. There are multiple statutes authorizing the appointment of such a receiver. The authorizing provisions can be found under Chapter 64 of the Texas Civil Practice and Remedies Code and Chapter 11 of the Texas Business Organizations Code. To be entitled to relief, at a minimum, the applicant seeking receivership must show the court that: (1) there is an outstanding judgment, and (2) there is at least one non-exempt asset. Tex. Civ. Prac. & Rem. Code § 31.002(a). A judgment debtor does not need to exhaust all other remedies prior to seeking appointment of a receiver.

Once a turnover order is signed, all of the judgment debtor's nonexempt property becomes in *custodia legis*, meaning "in the custody of the law." For more than a century under Texas law, courts have derived the power of receivership from this doctrine of *custodia legis* to bring a judgment debtor's property within the constructive possession of the court. During the pendency of a receivership, the receiver—acting on behalf of the court—will receive exclusive possession and custody of the judgment debtor's property to which the receivership relates.

Importantly, there is no geographic restriction limiting a receiver's reach for non-exempt real, personal, or intangible assets. Real property or corporate assets of the judgment debtor in another country fall within the receivership estate. A receiver may seek recovery and liquidation of all such property.

Although the concept of international recovery of assets by a receiver is straightforward in the abstract, in practice, execution of these recovery efforts can be difficult. The receiver will need to retain local counsel in the other country. The receiver must determine whether the country recognizes judgments from jurisdictions within the United States. If so, the country will undoubtedly have a registration process that the receiver must follow. Then the receiver, through local counsel, will follow country procedures to obtain turnover orders necessary to seize the assets.

If the country does not recognize judgments from United States jurisdictions, then the receiver must file an original suit in the foreign country, obtain service, and litigate its debt to a final judgment in that country. If the country refuses to recognize the standing of a Texas receiver, then the judgment creditor itself would be responsible for filing an original suit in the foreign country and re-litigating the creditor's claims against the debtor to final, enforceable judgment in that country.

Despite enforcement and service hurdles, Texas judgments may be enforced against a person or corporation by appointment of a receiver, who can reach non-exempt assets in another country. Such enforcement, however, does not come without its challenges, which can vary widely based on the laws of the foreign jurisdictions where the judgment debtor's assets are located. **HN**

James W. Volberding, CPA of the Volberding Law Firm is a retired Lieutenant Colonel, U.S. Army JAG Corps, with a 2017 Master's Degree in Strategic Studies from the U.S. Army War College. He can be reached at jamesvolberding@gmail.com.