



June 2013

Vol. 30, No. 6

THE DICTA

The Docket

June 6 (Thursday)

DAYL Wine Tasting
6:00 p.m., Sammons Center for the Arts

June 7 (Friday)

DAYL Leadership Application Deadline

June 11 (Tuesday)

DAYL Lawyers Promoting Diversity Committee Meeting
Noon, Belo Mansion

June 12 (Wednesday)

DAYL Membership Committee Meeting
6:30 p.m., The Londoner

June 13 (Thursday)

DAYL Freedom Run Committee Meeting
Noon, Belo Mansion

June 14 (Friday)

DAYL Coffee with the Court
8:00 a.m., George Allen Courthouse

June 18 (Tuesday)

DAYL Elder Law Committee Meeting
Noon, Belo Mansion

June 19 (Wednesday)

DAYL Criminal Bar CLE Program
Noon, Belo Mansion

June 20 (Thursday)

DAYL Animal Welfare Committee Meeting
Noon, Belo Mansion

June 20 - 21 (Thursday - Friday)

DAYL Teen Leadership Academy
10:00 a.m., Center for Community Cooperation

June 22 (Saturday)

DAYL Generation Generosity Program
9:00 a.m., Buckner Shoes for Orphaned Souls

June 24 (Monday)

DAYL Solo & Small Firm Committee Meeting
Noon, Belo Mansion

June 25 (Tuesday)

DAYL Lunch and Learn
Noon, Belo Mansion

June 25 (Tuesday)

DAYL Aid to the Homeless Committee Meeting
Noon, Belo Mansion

June 27 (Thursday)

DAYL Social
6:00 p.m., The Standard Pour

DAYL ONE TO WATCH

Eliot Walker has been selected as the June 2013 DAYL One to Watch! To find out why, visit www.dayl.com.

Just Your Ordinary Pour

Join DAYL for its June Social at The Standard Pour on **Thursday, June 27th**, beginning at 6:00 p.m. The Standard Pour is located at 2900 McKinney Ave. Our gracious sponsors, **Tammy Diamond & Associates** and **Jim Loughborough** of Reliant Mortgage, will provide a variety of appetizers and two drinks per person. The cost to attend is \$3.00 for DAYL members and

\$5.00 for non-members.

Tammy Diamond is a residential real estate broker. She has closed on over 150 homes in the 9 years she's been licensed. She is a specialist in M Streets, Lakewood, Uptown, Preston Hollow, North Dallas. Jim Loughborough is a Senior Loan Officer at Reliant Mortgage and has been originating loans in Texas for over 20 years. He offers conventional, FHA, VA, and jumbo loans.

What Every Young Lawyer Should Know About ... How NOT to Get Your Name in the Back of the Bar Journal

by Tim Hardesty

As most attorneys, young and experienced, are unfortunately aware, every month attorneys get sanctioned or disbarred for doing things that are avoidable. Don't be one of them. Join the DAYL at noon on **Tuesday, June 25th** at the Belo Mansion for a presentation on *What Every Young Lawyer Should Know About ... How NOT to get your name in the back of the Bar Journal*.

Robert Tobey, Partner at Johnston Tobey, P.C., **Paul Koning**, Partner at Koning Rubarts, LLP, and **Marilea Lewis**, Partner at Godwin Lewis, P.C., will discuss traps for the unwary, best practices, and things to avoid.

This program has been approved for 1.00 hour ethics CLE credit and is free for DAYL members. The non-member fee is \$10.00. RSVP to **Cherie Harris** (cherieh@dayl.com).

Coffee with the Court

by Aaron Capps

This year, the DAYL Judiciary Committee is proud to provide you with a new program that will afford you the opportunity to interact directly with judges on a more personal level. The program is called Coffee with the Court. Throughout the year, we will provide you the chance to visit with different Dallas County judges in their chambers or at their favorite breakfast spot to ask questions, get legal tips, and learn how judges think.

The first event will be with the **Honorable Tonya Parker** on June 14th from

8:00 a.m. to 9:00 a.m. Judge Parker presides over the 116th District Court, a position she has held since 2010. During this program, attendees will receive practical advice regarding the summary judgment procedure. Afterwards, Judge Parker will conduct a Q&A session to address any questions that attendees have. Coffee and bagels will be provided, but space is limited. This program is only available to DAYL members and space will be reserved on a first-come, first-served basis.

To register, email **Aaron Capps** at acapps@peavlergroup.com.

THE DICTA

Paul Simon, Editor

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Copy Deadline for July Issue:

June 15, 2013

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*The views expressed in The
Dicta do not necessarily reflect
the views of the Dallas
Association of Young Lawyers.*

From the President

Celebrating Success



Sarah Rogers

Last year, DAYL's committees and volunteers put on 150 different events, fundraisers, and service projects targeted at serving needs within the Dallas community. DAYL members also raised thousands of dollars that went to assist families in need of legal assistance, dogs and cats in shelters, families of officers killed or injured in the line of duty, and countless others. As part of a new initiative last year, DAYL members had monthly opportunities to provide hands-on community service through "Generation Generosity," a grassroots, monthly service series created by Immediate Past President, **Chip Brooker**. Through Chip's leadership and hard work, Generation Generosity was a resounding success and was just one part of a very successful year for DAYL in 2012.

Every June, the Texas Young Lawyers Association honors the work of local bar organizations around the state. Each year, DAYL is recognized for its hard work and dedication to community service and service to the profession. This year was no exception. The TYLA recognized DAYL with the following awards for our collective efforts in 2012:

- 1st Place Comprehensive, which means DAYL was recognized as the best all-around young lawyer affiliate in Texas;
- 1st Place Public Service Project, for Generation Generosity;
- 1st Place Newsletter, for *The Dicta*;
- 1st Place Diversity Project, for Diversity, Dinner, and Dialogue, "Creating a Culture of Inclusion" with TYLA and author **Ron Hall**; and
- 2nd Place Service to the Bar, for the Court Visitor Training Program.

None of these projects would have been

as successful without the hard work and dedication of our Executive Director, **Cherie Harris**. Thank you, Cherie, for being there every step of the way and supporting DAYL, our members, and our projects.

The January Dinner, Diversity, and Dialogue event began with speaker Ron Hall, author of the novel, "*Same Kind of Different as Me*." Mr. Hall spoke about his own experiences in befriending a homeless man on the streets of Fort Worth and the positive impact on both of their lives that came from a seemingly unlikely friendship. A panel discussion of several local attorneys about diversity in the workplace and creating a culture of inclusion followed. Thank you to the TYLA for their assistance and organization and to the 2012 DAYL Lawyers Promoting Diversity Committee, including: **Erin England**, **Lacy Durham**, **Jennifer McCollum**, and **Katie Dolan-Galaviz**.

The Elder Law Committee - together with the probate courts and their investigators - held multiple training sessions in 2012 for attorneys who are willing to become court visitors and to be appointed as Attorneys Ad Litem on guardianship cases. The training programs consisted of 5-hours of CLE that included discussions on the guardianship process and necessary documentation, case studies, discussions with a guardian and ward, tips for prove-ups, and available community resources. Please congratulate members of the 2012 DAYL Elder Law Committee who created the court visitor training program: **Jason Lemons**, **Rebekah Brooker**, **David Meade**, **Steven Hallbauer**, and **Judge Chris Wilmoth**.

Finally, congratulations to the 2012 DAYL Board of Directors, committee co-chairs, and members who participated in all of the projects last year. Your service and dedication makes DAYL truly successful.

SAVE THE DATE!

Mark your calendar for the DAYL Lawyers Promoting Diversity Committee's Eighth Annual Dinner & Dialogue. The theme this year is *"Diversity: The Changing Face of the Modern Workplace."*

Date: Thursday, July 18, 2013
Time: 6:00 p.m. – 8:30 p.m.
Location: Belo Mansion, 2101 Ross Avenue, Dallas, Texas
CLE: 1.5 hours of ethics credit pending

For information, contact **Cherie Harris** (cherieh@dayl.com) or **Erin England** (erin.england@haynesboone.com).

In Case You Missed it - Understanding and Dealing with Home Owners Associations

by Tim Hardesty

In case you missed it, the DAYL CLE Committee recently organized a panel discussion about dealing with Home Owners Associations. The panel included **Mark A. Castillo** (Practice Management Shareholder at Curtis Castillo, PC, and HOA President), **Dean Riddle** (Partner at Riddle & Williams, P.C.), and **Greg Fell** (Founder of the Fell Law Firm). The program was moderated by **Andrew Jenkins** (the Law Offices of Andrew K. Jenkins).

Essentially, Home Owners Associa-

tions are created to enforce deed restrictions, but many of them are set up as not for profit corporations, as well. Thus dealing with Home Owners Associations often requires one to unwind an intricate tangle of "dirt law," corporate law, and fiduciary law.

When dealing with Home Owners Associations, always remember that not only is this a relatively young area of law, it is also a subject that makes people very emotional. Having members of the Board directly communicate their concerns to individual home owners can of-

ten forestall protracted arguments, the levying of fines, and legal action.

Members of the Board owe a fiduciary duty to the homeowners, which means that it is important to have the Board members insured and for Board members to be cognizant of self-dealing or other actions that could be inappropriate.

Historically, suits against Boards have been brought by homeowners who were upset by actions the Board had taken. However, suits against Boards for failure to enforce the covenants are starting to arise.

Best Practices in the State and Federal Courts

Join DAYL on **Thursday, June 13th** at noon at the Merrill Hartman Courtroom (located on the 8th floor of the George L. Allen, Sr. Courts Building, 600 Commerce Street) for a one hour panel discussion on "Best Practices in the State and Federal Courts." The panel will consist of **Judge Catharina Haynes**, federal judge on the United States Court of Appeals for the Fifth Circuit; **Justice Elizabeth Lang-Miers**, judge on the Texas Fifth District Court of Appeals; **Judge Renee Harris Toliver**, federal

magistrate for the Northern District of Texas; and **Judge Martin Hoffman**, judge in the 68th Judicial District Court, Dallas County, Texas.

Strengthen multiple facets of your legal practice by gaining practical insight into "Best Practices" on topics such as: presenting oral argument; briefing and motion practice; and interacting with courts and courts' staff.

There is no charge for DAYL members to attend. RSVP to **Chris Simmons** (csimmons@ghjhlaw.com) to ensure we have enough seats available. Space is limited. Please note that

CLE will not be provided at this program, nor will lunch be available. We encourage you to eat before or after the program.

DAYL Pub Trivia is Back!

Tuesday, June 25
7:00 p.m.
The Londoner

Email Cherie Harris
(cherieh@dayl.com) for
registration information

In Recognition of Outstanding

by Meyling Ly

Each year, DAYL has the distinct honor of recognizing an Outstanding Young Lawyer, an Outstanding Mentor, and a Liberty Bell Award recipient at the Dallas Bar Association's Law Day Luncheon. May 3, 2013 was no different as DAYL presented awards to each of this year's award recipients: **Brittany Byrd**, **The Honorable Harlin D. "Cooter" Hale**, and **Dr. Dan Weiser**, all outstanding individuals who have contributed to the Dallas community and whose lives reflect an unwavering commitment to justice.

Outstanding Young Lawyer

The 2013 Outstanding Young Lawyer, Brittany Byrd, is an associate in Winstead's Finance and Banking Practice Group where she works as a transactional attorney. Brittany, who is also a Certified Public Accountant, has been passionately advocating for the underserved since law school. Brittany's most extraordinary contribution to our profession is her commitment to pro-bono representation of first-time, non-violent drug offenders who have been sentenced to life in prison without parole. Perhaps what is even more amazing about her pro-bono representation with regard to these criminal matters is that Brittan is a transactional attorney. Her pro-bono clients describe her as "an angel" and their "only source of hope" as they face the fate of serving the second most severe penalty permitted by law in America. Her work will be included in a report to be published by the American Civil Liberties Union in an effort to promote reform of federal mandatory minimum sentencing guidelines.

In addition to her pro-bono work, Brittany also serves as the chair of a local non-profit, Girls Embracing Mothers, Inc. ("GEM"), that she founded at age 25 in 2009. GEM is a non-profit organization dedicated to providing vital services to young girls whose mothers are incarcerated. GEM offers various programs designed to empower and enrich the lives of daughters of incarcerated women, and challenge them to become self-assured, positive thinking, productive members of society while sustaining the mother-daughter bond. A true and long labor of love, the incorporation and development of GEM was the fruition of the hundreds of hours that Brittany un-

by the Texas Young Lawyers Association as Texas's Outstanding Young Lawyer.

Outstanding Mentor

DAYL's 2013 Outstanding Mentor, the Honorable Harlin D. "Cooter" Hale, is the U.S. Bankruptcy Judge for the Northern District of Texas, a position he has held since 2002. Judge Hale grew up in Louisiana, where he attended LSU and received both his undergraduate degree and Juris Doctorate. Judge Hale is extremely involved with the young legal bankruptcy community, serving as both an inspiration and example to young lawyers in Dallas and surrounding areas. Not only has he has taught Creditors' Rights at the SMU Dedman School of Law as a

visiting professor for seven semesters, but also, each semester, over the holidays, and during the summer, Judge Hale has several law student externs who have the unique opportunity to get first-hand experience inside a federal trial court by observing hearings, preparing draft orders and opinions, and writing case summaries for bankruptcy publications. These externs are from schools in Texas and throughout the country.

Judge Hale's commitment to the development of

young lawyers is also clearly visible in two major CLE programs that he leads each year. The first, "Starting Out Right" is a statewide program Judge Hale created in 2008 for newly-licensed bankruptcy lawyers. Over 350 young lawyers have attended this day-long CLE, which is pre-



(l to r) DAYL President-elect Meyling Ly, Judge Harlin D. Hale, Brittany Byrd, and DAYL President Sarah Rogers

dertook to make her vision come true. She carefully assembled an esteemed group of board members and established relationships with leaders in the Texas criminal justice system that resulted in a partnership with women's prisons located in Gatesville.

DAYL is especially honored by Brittany because she has also been recognized

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In Recognition of Outstanding

(continued from page 4)

sented by seasoned practitioners and bankruptcy judges who teach legal and practical skills to young lawyers and is considered a “must-attend” CLE for consumer and corporate bankruptcy associates. The second program is the John C. Ford American Inn of Court Chapter 11 Bankruptcy Course, a 12-week long CLE that includes classroom and moot court elements. Finally, the fact that so many of his externs, law clerks, and mentees are involved in the bankruptcy bar, in the local bar, and in the community at large, is a testament to his ability to encourage and inspire young lawyers.

Judge Hale has also been recognized

by the Texas Young Lawyer’s Association as Texas’s Outstanding Mentor.

Liberty Bell Award

The 2013 Liberty Bell award recipient, Dr. Dan Weiser, paved the way for Congressional and legislative redistricting in Texas in the early 1970s. A mathematician by trade, he was a champion for equal access to the law by passion. In fact, Dr. Weiser used the law as the lead plaintiff in the United States Supreme Court case of *White v. Weiser, et. al.* to establish fair Congressional and legislative redistricting in Dallas County, the first pivotal step in electing African American state representatives in 1972.

Dr. Weiser was the driving force in the

effort to ensure that racial minorities had a place in governance and has been credited with helping achieve opportunities for minorities and women candidates to represent Texas in Congress and the Texas Legislature. As one person noted, “[he] was a master of applying the law to new statistics, to new data and creating maps that would withstand judicial scrutiny.” Dr. Weiser continued his involvement in redistricting cases in the 1980’s to insure minority voters would get a fair shake both before the legislature and in the courts.

DAYL is humbled by the excellence of its award recipients. Congratulations and gratitude to all for raising the bar in Dallas.

Wines and Beer to be Featured at the DAYL Annual Wine Tasting

Don't miss this year's Equal Access to Justice Wine Tasting benefiting the Dallas Volunteer Attorney Program. The Wine Tasting will be held on **Thursday, June 6, 2013**, beginning at 6:00 p.m., at the Sammons Center for the Arts, 3630 Harry Hines Blvd. in Dallas.

This year's Wine Tasting will feature food and wine from France and beer from local breweries. Complimentary valet parking will be available.

At the event, DAYL will present the Young Lawyer Pro Bono Service Award. **Charlie Gearing**, an associate at Haynes and Boone will be the 2013 recipient of the Award. Mr. Gearing, a 2009 graduate of Vanderbilt Law School, donated approximately 560 hours of pro bono work in 2012, handling numerous types of cases for organizations such as the Dallas Volunteer Attorney Program, Human Rights Initiative, Dallas After School Network, and Habitat 4 Paws, serving as its legal advisor.

The Wine Tasting is always fun, provides great networking opportunities, and most importantly, helps raise funds for the Dallas Volunteer Attorney Program, which provides free legal services to indigent citizens of Dallas.

Tickets for the event are \$25 in advance, \$35 at the door and \$15 for government employees, law clerks, law students and interns.

Email **Cherie Harris** (cherieh@dayl.com) for ticket information.

WALK FOR WELLNE\$\$

Dust off and lace up your sneakers! Starting July 1, DAYL's Wellness Committee will be holding Walk for Wellne\$\$, a four-week pedometer challenge. Entry is for FREE for all DAYL members. Each participant will be given a DAYL pedometer to track the amount of steps taken from July 1 to July 26. Weekly updates will be provided and cash prizes will be provided to the top four steppers! To participate email Paul Simon (pauls@colesfirm.com) or Cherie Harris (cherieh@dayl.com) by June 20. Let's walk it out....

COUCH TO 5K

Join DAYL members to train for this year's Freedom Run! The Wellness Committee and the Freedom Run Committee will be organizing small groups to train together for the 5K on September 12, 2013. The groups will meet weekly beginning the week of July 8th and are open to all levels of runners. If you are interested in joining one of these groups, contact Lauren Brown at Lauren.Brown@bgllp.com, and go to www.freedomrun.com and "like" our page on facebook, for more information on this year's race.

DAYL Social with the Judges a Great Success

On April 25th, the DAYL Judiciary Committee hosted a Social with the Judges. The event was held at the City Club in Dallas and included free hors d'oeuvres and refreshments, made possible by our law firm sponsors.

Many judges were able to attend the popular event, including those from local, federal, and state courts.

On behalf of DAYL Judiciary Committee, we would like to thank the following judges who were in attendance: **Justice David Evans** (Fifth District Court of Appeals); **Judge Carl Ginsberg** (193rd Civil District Court); **Judge Harlin D. "Cooter" Hale** (U.S. Bankruptcy Court for the Northern District of Texas); **Judge Julia Hayes** (County Criminal Court No. 2); **Judge Catharina Haynes** (U.S. Court of Appeals for the Fifth Circuit); **Judge Martin Hoffman** (68th Judicial District Court); **Judge**

Johnese Howard (Associate Judge, 330th Family District Court); **Judge Brenda Hull-Thompson** (Probate Court No. 1); **Judge Jim Jordan** (160th District Court); **Judge Angela King** (County Criminal Court No. 6); **Judge James Martin** (254th Family District Court); **Judge Eric Moyé** (14th District Court); **Justice Mary Murphy** (5th District Court of Appeals); **Justice Lana Myers** (Fifth District Court of Appeals); **Judge John Peyton** (Associate Judge for the County Probate Courts); **Judge Andrea Plumlee** (330th District Court); **Judge Monica Purdy** (Associate Judge for the Dallas County District Courts); **Judge Doug Skemp** (County Criminal Court No. 3); **Judge Gena Slaughter** (191st District Court); **Judge Ken Tapscott** (County Court at Law No. 4); **Judge Chris Wilmoth** (Probate Court No. 2); and **Judge Ernest White** (194th Criminal District Court).



Thank You to the Sponsors of the Social with the Judges

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Representing the Tenant with “No Leverage”

by Andrew K. Jenkins

You may think that a tenant who leases a tiny portion of a project (building, shopping center, etc.) would have no leverage with the landlord. And that such a deal would be take-it-or-leave-it.

It is not. Landlords lose money on empty space. The expenses of the project (insurance, maintenance, etc.) have to be paid regardless of who is renting. Also keep in mind that many things that are important to the tenant are not that important to the landlord, and vice versa.

So where to start?

Let's begin with stylistic matters. When you are editing the landlord's form¹ try not to do too much in the body of any particular provision. I've found that major edits are more palatable if they are in a separate paragraph that begins with, “Notwithstanding the foregoing...” I know it's ugly drafting, but when I've tried to get something in a lease and turned a section into a Tarantino movie, it didn't go well.

Also, explain your edits in the redline. A change is much more likely to be accepted if it comes with the reason why. And unless it's material, DON'T CORRECT SPELLING OR GRAMMAR! There are bigger fish to fry.

Now, let's move on to individual provisions.

Maybe most dear to the tenant is the guaranty. Whether there is one and for how long is not really up to you. That's more a function of market and strength of the Tenant. But that does not mean that an unconditional personal guaranty can't have some limits.

Limit the guaranty to an amount or number of years – or both, as in “the total of lease payments for X years²”. Also, limit the guarantor's liability to the tenant's actual liability. This gives the guarantor the tenant's defenses under the lease.

While we're here, memorialize the Landlord's duty to mitigate damages. Meaning, the “landlord must use com-

mercially reasonable efforts to relet the space to tenants of financial means and creditworthiness similar to other tenants in the project, at rates and on terms and conditions commonly found in the market.” This provision prevents the landlord running up the bill out of spite, and, if you have the guarantor's limitation above, is especially valuable.

Also, pay attention to the items in Common Area Maintenance. I am never surprised to see both the actual cost of capital improvements AND the depreciation thereof included in a form. Exclude the cost of the improvements and include the depreciation. To have both, is merely landlord enrichment. And the depreciation term may be longer than the term of the lease.

Another issue that a small tenant can get movement on is Landlord Access. Traditionally, the landlord will want to be able to waltz into the space whenever it wishes and for any reason. But realistically, the landlord only cares that it be able to do maintenance/repairs and show the space to buyers, lenders, and future tenants. At a minimum, get the landlord to announce in writing any entry at least 24 hours in advance.

Some other areas where your client will find value are:

- Taxes – Real estate taxes are fine, don't pay landlord's income taxes;
- Tenant's insurance – make it reason-

able based on the actual need;

- Financial Statements – once per year should be plenty;
- Hazmat reps, warranties, indemnification – it's fair to make it reciprocal;
- Casualty/Condemnation – if the business can't operate, all rent ceases
- HIPAA – if you have a medical provider get indemnification from the landlord against violations caused by its agents.

Some final points

No lease is take-it-or-leave-it. Landlords lose money on empty space and any money coming in will help their bottom line. Make sure you meet the business objectives of your client and brush off things that really don't matter. Demonstrate that your edits are reasonable, rather than return a draft with a lot of red on it. Oh, and run your own redlines. Things do appear and disappear by magic.

¹ It will be the Landlord's form. Don't make the mistake of substituting your own.

² If this wasn't in the LOI consult with the tenant's agent. This is very much a function of market and strength of tenant. Landlords will walk away over this.

Andrew K Jenkins is a corporate and real estate attorney who is also a solo practitioner. He can be reached at AndrewKJenkins@akj-law.com.

Considering Participation in the 2013 DAYL Leadership Class?

Application Deadline is June 7, 2013.

Visit www.dayl.com/pdf/leadership.pdf for an application or contact Cherie Harris (cherieh@dayl.com) for information.

Scenes from May's Generation Generosity Event at Dallas Community Partners



Thank you to all of the volunteers and their kids who participated in this event!

Join DAYL at noon on Wednesday, June 19 at the Belo Mansion for a one hour CLE, including .50 hours of ethics credit. The topic is social media and its use in discovery in criminal cases. The speakers are Greg McAllister (Gruber Hurst Johansen Hail & Shank) and Chris Lewis (Crain Lewis). There is no charge for DAYL members to attend; there is a \$10 fee for non-members. RSVP to Cherie Harris (cherieh@dayl.com)

The Dallas Bar Foundation and Bar None Production Company present Bar None XXVIII: Downton Att'y. Watch Dallas area lawyers and judges sing, dance and make you laugh so hard your sides hurt.

Proceeds benefit the Sarah T. Hughes Diversity Scholarship at the SMU Dedman School of Law.

7:30 p.m., June 12, 13

8 p.m., June 14, 15

Greer Garson Theatre, SMU

www.barnoneshow.com

For ticket information, contact Elizabeth Philip, ephilipp@dallasbar.org.

Help judge the TYLA's 38th annual State Moot Court Competition on June 18-20, 2013 in Dallas. Volunteers are needed in the following preliminary rounds:

June 18th

9:00 a.m.; 11:00 a.m.; 2:30 p.m.; and 4:30 p.m.

June 19th

9:00 a.m.; 11:00 a.m.; and 2:30 p.m.

If you are willing to serve as a judge or if you have any questions, email zeke.fortenberry@gmail.com with the following information: (1) your cell phone number; (2) preferred email address; (3) law school attended; (4) graduation year; and (5) which day(s)/time(s) you are signing up to judge.