



March 2013

Vol. 30, No. 3

THE DICTA

The Docket

March 7 (Thursday)

DAYL Freedom Run Committee Meeting
Noon, Belo Mansion

March 11 (Monday)

DAYL Ask-A-Lawyer Committee Meeting
6:00 p.m.

March 12 (Tuesday)

DAYL Lawyers Promoting Education Meeting
6:00 p.m., Hunton & Williams

March 13 (Wednesday)

DAYL Lunch and Learn CLE
Noon, Belo Mansion

March 13 (Wednesday)

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

March 14 (Thursday)

DAYL Teen Leadership Committee Meeting
6:00 p.m., Common Table

March 16 (Saturday)

DAYL Generation Generosity
9:00 a.m., Bright Star Youth Academy

March 19 (Tuesday)

DAYL Elder Law Committee Meeting
Noon, Belo Mansion

March 19 (Tuesday)

DAYL Food for Thought Committee Meeting
6:30 p.m.

March 20 (Wednesday)

DAYL Lawyers Promoting Diversity Committee Meeting
Noon, Belo Mansion

March 21 (Thursday)

DAYL Animal Welfare Committee Meeting
Noon, Belo Mansion

March 21 (Thursday)

DAYL Lunch and Learn CLE
Noon, Belo Mansion

March 22 (Friday)

DAYL CLE Committee Meeting
Noon, Belo Mansion

March 25 (Monday)

DAYL Solo & Small Firm Committee Meeting
Noon, Belo Mansion

March 26 (Tuesday)

DAYL Lawyers Promoting Education Committee Meeting
Noon, Belo Mansion

March 26 (Tuesday)

DAYL Aid to the Homeless Committee Meeting
Noon, Belo Mansion

March 27 (Wednesday)

DAYL Criminal Bar Involvement Committee Meeting
Noon, Belo Mansion

March 27 (Wednesday)

DAYL / TLAP CLE
Noon, Belo Mansion

March 27 (Wednesday)

DAYL Equal Access to Justice Committee Meeting
Noon, Belo Mansion

March 28 (Thursday)

DAYL Social
6:00 p.m., Mason Bar

DAYL Social at Mason Bar

Join DAYL for its March Social at The Mason Bar, on **Thursday, March 28th**, beginning at 6:00 p.m. **Courier Management Systems** will sponsor this event, which will include drinks, appetizers, and live music from singer/songwriter Scott Coburn (aka Big Burn)!

Courier Management Systems, an established courier delivery and process service business, has been proudly serving greater

Dallas-Fort Worth clients 24 hours a day, 7 days a week since 1995.

Contact Dick Trammell at 214.855.0303 for more information or visit them online at www.couriermanagementsystems.com.

The cost to attend is \$3 for DAYL members and \$5 for non-members, which includes two drink tickets and light appetizers. The Mason Bar is located at 2701 Guillot Street in Uptown Dallas. We hope to see you on March 28th!

DAYL Invites YOU to Get Involved

Whether you are new to DAYL or you are just deciding to get involved, the DAYL Membership Committee invites you to join us for our annual “*How to Get Involved*” luncheon on April 4th at noon at the Belo Mansion.

Please join us to hear from committee co-chairs and learn how you can get involved with one (or more!) of our more than 30 committees. No matter what your interests and passions, there’s sure to be at least one committee that will offer you the opportunity to further pursue those passions and give back to our pro-

fession and the community as a whole.

Involvement with our committees will provide you with opportunities to socialize with judges; assist the elderly, kids, domestic violence victims, the homeless and animals; network with other lawyers and professionals in the Dallas community; sharpen your job skills and simply have fun, among other things.

There is no charge to attend and lunch will be available for a nominal fee. Attendance is open to both lawyers and law students.

RSVP to **Cherie Harris** (cherieh@dayl.com).

What Judges Really Want to Read in Your Motions and Other Pleadings

by Abigail B. Moore

From the beginning of time (or at least since passing the bar), young lawyers have wondered what judges really want to read (and what they really do not) in filed motions and pleadings. Join the DAYL at noon on Wednesday, **March 13th** at the Belo Mansion for a panel discussion on *What Judges Really Want to Read in Your Motions and Other Pleadings*.

Judge Irma Ramirez (U.S. Magistrate Judge), **Judge Emily Tobolowsky**

(298th Judicial District Court), **Judge Jim Jordan** (160th Judicial District Court), and **Judge Mark Greenberg** (County Court at Law No. 5) will discuss what they, as judges, want to see in pleadings and motions, what is not persuasive, and tips for how to present motions and pleadings that address what the judges need to see.

This program has been approved for 1.0 hour CLE credit and is free to DAYL members and \$10.00 for non-members. RSVP to **Cherie Harris** (cherieh@dayl.com).

THE DICTA

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Copy Deadline for April Issue:

March 10, 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

Take the INroads and Get INVolved



Sarah Rogers

“To live is to become involved. To become involved is to care. To care is the essence of being. So...do all you can, in the time that you have, in the place that you are.” Former DAYL and DBA President, **Al Ellis**, includes this quote at the bottom of his e-mails. Al's words are ones that I strive to live by and they are words that ring true with one of DAYL's new initiatives in 2013: INroads.

Think back to the first DAYL event you attended. Did you go by yourself? Did you manage to find a law school classmate or someone from your firm to go with you? Did someone invite you to attend and meet you at the event? Once you attended that first DAYL event, did you choose to get involved? Maybe someone reached out to you and suggested that you serve as a committee member or committee co-chair. This year, DAYL wants to encourage its members to attend DAYL events and get involved with the organization through its new initiative: INroads.

INroads will feature two different categories of participants. New DAYL members or those members who have not attended more than a few events will be invited to sign up as INcomers. DAYL members who have been involved, for example, by attending numerous DAYL events, serving as committee members, committee co-chairs, or in other leadership roles will be invited to sign up as INthusiasts. Each INcomer and INthusiast will complete a form indicating their interests in DAYL such as attending monthly CLEs, monthly socials, or monthly service projects as well as indicating their interests outside of DAYL such as whether you have children, your practice area(s), and how you like to spend your free time.

Based on these preferences, the INroads committee will match INthusiasts with

INcomers. From there, the commitment is simple: INthusiasts will be asked to send an e-mail telling her INcomer which DAYL events she will be attending. The goal is to have the INthusiasts meet the INcomers at the events so that new DAYL members can meet other members with similar interests through their INthusiasts' connections within the organization. The hope is that making these connections will open the doors for INcomers not only to feel welcome, but will provide an easy avenue for all DAYL members to get involved. The commitment lasts for the 2013 calendar year.

As with any new project, this one required a lot of time and planning. I want to give a special thank you to **Jodi McShan**, who has spearheaded this new project, as well as the other co-chairs of the committee: **Jennifer Larson**, **Morgan Atkinson**, and **Stephen Richman**. I would also like to give a special thank you to **John Burkhead** and **Cheryl Camin Murray** for their contributions to this project.

I challenge all of our members to get INVolved with DAYL and do what you can in the time that you have. For our INthusiasts – take time to share your passion and involvement with new DAYL members. For our INcomers – take time to get involved and make new connections within the organization, find your passion, and make a difference. It is your INthusiasm and INVolved that makes DAYL an outstanding organization.

DAYL ONE TO WATCH

Susan Hannagan has been selected as the March 2013 DAYL One to Watch! To find out why, visit www.dayl.com.

DAYL Accepting Nominations for Prestigious Awards

DAYL is accepting nominations for its Outstanding Young Lawyer Award, the Liberty Bell Award, and the Outstanding Mentor Award.

Outstanding Young Lawyer Award -

To be eligible for selection as the DAYL's Outstanding Young Lawyer, nominees must have been 36 years of age or younger as of June 1, 2012. In addition, nominees must be members in good standing of the Texas State Bar. The Awards Committee will consider all outstanding qualities of a nominee, including (1) exemplified professional proficiency; (2) service to the profession; and (3) service to the community.

Liberty Bell Award - The Liberty Bell

Award recognizes a non-lawyer who has made a selfless contribution to the community by strengthening the effectiveness of the American system of justice. The categories of community service to be considered include activities that (1) promote a better understanding of our form of government, especially the Bill of Rights; (2) encourage greater respect for the law and the courts; (3) stimulate a deeper sense of individual responsibility; (4) contribute to the effective functioning of our institutes of government; and (5) instill a better understanding and appreciation of the rule of law. Non-lawyers of any age are eligible to receive this award.

Outstanding Mentor Award - The DAYL Outstanding Mentor Award is

awarded to a lawyer in Dallas who has consistently demonstrated a commitment to mentoring young lawyers in his or her legal community. Nominees must be members in good standing of the Texas State Bar. The DAYL Awards Committee will consider all outstanding qualities of a nominee, including (1) service as a role model to young lawyers in the legal community; (2) fostering the development of young lawyers; and (3) significant contributions to the profession and/or the community.

If you would like to nominate someone for an award, contact **Mey Ly** (mly@littler.com or 214.880.8122). The deadline for submitting nominations is **March 11, 2013**.

You're Invited!

Dallas Stars DAYL Night



VS.



Thursday, April 18th @ 7:30pm
ONLY \$15

Visit: dallasstars.com/dayl
Special Offer Code: **gostars**

Join us for a free **PRE-GAME** party on the plaza!*

Live **music**, NHL **Alumni** meet & greet, **beer garden**, games, **prizes** & more kicks off at **5:30pm!**

*Food/beverages additional cost



COOLEST GAME ON EARTH

Questions? Contact your Stars rep, Amber Slone at 214-387-5514 OR aslone@dallasstars.com

Free Screening of *Waiting for Superman*

Interested in learning how to get involved with and participate in efforts to improve our local public school system? Join the Lawyers Promoting Education Committee at our next meeting on Tuesday, **March 12th** at 6pm. We will briefly discuss projects planned for this year and how you can get involved, with a free screening of the award-winning

documentary *Waiting for Superman* to follow. This documentary addresses the current state of the public education system in America, including issues and obstacles historically encountered in addressing problems with the system, and examines solutions from districts across the nation that might also work in our community.

The screening will be held at Hunton

& Williams, LLP located on the 37th Floor of the Fountain Place Building at 1445 Ross Avenue. Parking is available in the garage under the building which is accessible from Field Street. Parking vouchers, drinks and snacks will be provided.

RSVP to **Stefanie Bradshaw** (stefanie@paynemitchell.com) by Monday, March 11th. We look forward to seeing you there!

Prenuptial and Postnuptial Agreements CLE

Join the DAYL CLE Committee on **March 21st** at noon at the Belo Mansion as we discuss *What Every Lawyer Needs to Know about Prenuptial and Postnuptial Agreements*.

Judge Dennise Garcia (303rd Judicial District Court of Dallas County, Texas), **Tom Goranson** (Goranson Bain, PLLC), and **John H. Withers** (Withers

& Withers, P.C.) will be discussing common questions people have about these agreements, how to answer your friends' and relatives' questions, and how prenuptial and postnuptial agreements operate. Discussion will also include how corporate documents affect prenuptial and postnuptial agreements and other documents that bear upon the agreements.

You don't want to miss this CLE! Attorneys from all areas are welcome and encouraged to come as this CLE explains how to answer questions commonly asked by friends and family and touches on more than just family law.

There is no charge for DAYL members to attend; the non-member fee is \$10.00. RSVP to **Cherie Harris** (cherieh@dayl.com).

DAYL and TLAP Present One Hour Ethics CLE Program

Lawyers suffer greater rates of depression and alcohol abuse than the general population, but fear of going public causes many to battle their problems in isolation. About 19 percent of lawyers experience depression at any given time, compared with 6.7 percent

of the general population. About 20 percent of lawyers have drinking problems, twice the rate of the general population.

Please join the DAYL Wellness Committee and TLAP (Texas Lawyer's Assistance Program) at noon on **March 27th** at the Belo for a screening of *The Texas State Bar's acclaimed Practicing from the*

Shadows and a Q&A on depression in the law. One hour of ethics credit, free of charge.

Contact **Cherie Harris** (cherieh@dayl.com) to sign up for this one hour ethics CLE program. Don't miss this important presentation, that will undoubtedly hit closer to home than you'd expect.

DAYL Generation Generosity Event on March 16

Join DAYL on **Saturday, March 16th** from 9:00 – 11:00 a.m. for March's Generation Generosity event.

Bright Star Youth Academy is a relatively new non-profit in Dallas, having opened their doors in July 2012. Bright Star Youth Academy is a residential treatment center for fifteen girls, ages 10 – 17, who are in child protective services custody and who are waiting foster placement or family reunification. Bright Star

Youth Academy is only one of ten such agencies state of Texas and is the only agency of its kind in Dallas and the surrounding 19-county radius.

Many of the children who reside there have been diagnosed with moderate-to-severe emotional disorders and require specialized treatment for their specific diagnoses. While at Bright Star Youth Academy, each resident receives specialized therapeutic support that addresses damages from their past and fortifies them with indi-

vidualized skills to serve them a lifetime.

Because the non-profit is so new, their needs are great. Accordingly, DAYL invites you to join us for a few hours as we put up shelving and storage bins in their donation room and organize the clothes, shoes, and household items.

To volunteer for this event, please contact **Cherie Harris** (cherieh@dayl.com) to sign up. If you're not able to help on March 16th, but want more information, please contact Cherie.

New Rules May Have Profound Effect on Civil Litigation

by Judge Martin Hoffman

After extensive comments by the civil trial bar, the Texas Supreme Court adopted new rules that took effect on March 1, 2013. These rules went through significant revisions during the rule-making process. Therefore, all civil litigators should carefully read the final version of the rules. These rule revisions covered three basic areas: (1) Expedited Actions; (2) Dismissal of Baseless Causes of Action; and (3) Modification of the Medical Expense Affidavit Form pursuant to TRE 902(10)(c). The Expedited Action Rule applies to cases filed on or after March 1, 2013. The other two rules apply to cases pending on March 1, 2013.

Rules for Expedited Actions

The rules for Expedited Actions involve amendments to TRCP 47 and 190 and the creation of TRCP 169. In TRCP 169, the Texas Supreme Court created an expedited trial process for certain cases where the claimants, but not counter-claimants, have pled \$100,000 or less. Rule 169 does not apply to cases where the parties seek non-monetary relief or for claims governed by the Family Code, Tax Code, Property Code or in medical malpractice cases. A party who prosecutes a suit under this rule may not recover a judgment in excess of \$100,000, excluding post-judgment interest. A court must remove a suit from this process upon a request and showing of good cause or if any claimant, other than a counter-claimant, seeks relief not allowed by this Rule. Some commentators have raised concerns about cases where a party with a large claim against them might file a suit under this section so they can limit discovery of the opposing party who would then be a counter-claimant. A party who fails to plead in accordance with these rules will be unable to conduct discovery until the pleading defect is cured.

Expedited cases must be set for trial within 90 days after the close of discovery. Discovery closes 180 days after the first discovery request is sent. Therefore, if the

Plaintiff sends discovery with the Original Petition, the trial court must set the case within 270 days after the Petition is served. The Supreme Court made a major revision to this rule in the final rule making when they added that a court may only continue a case twice, not to exceed a total of sixty days. This rule seems to require that a expedited case be tried within eleven months after the first discovery is served. This may cause older, larger cases to be bumped from dockets to allow expedited cases to be tried within the eleven month time limit.

This rule also limits the length of trial for expedited cases to eight hours to complete jury selection, opening, evidence and closing per side. Upon the showing of good cause, the court may extend this limit to twelve hours. Time spent on objections, bench conferences and challenges for cause to a juror are not included in the time limit. In final rule making, the Supreme Court allowed courts to order half day mediations unless the parties agreed not to engage in ADR.

Discovery is limited to six hours in total deposition time per party, unless they agree to extend it to ten hours. The court may extend deposition time in excess of ten hours. Parties may serve on any other party no more than 15 interrogatories, 15 requests for production and 15 requests for admission. The Supreme Court created a new discovery device that requires parties to disclose all documents, electronic information and tangible items that the disclosing party has in its possession, custody or control that support its claims or defenses. These limitations on discovery also apply to divorces not involving children where the marital estate is not more than \$50,000. The rest of the expedited action rules do not apply to divorce cases.

Dismissal of Baseless Causes of Action

The newly created Rule 91a creates a procedure that is similar to the FRCP 12(b)(6). This rule allows parties to move

to dismiss causes of action that have no basis in law or fact. The motion to dismiss must be filed within 60 days after the challenged cause of action is served. The motion must be filed at least 21 days before the motion is heard and the court must grant or deny the motion within 45 days after it is filed. Practitioners who file these motions should notify the court's clerk of the deadline to rule on the motion. The court is required to award fees and costs to the prevailing party on the motion. The court is allowed to look only to the pleadings in deciding these motions, but is allowed to receive evidence of costs and fees. Respondents are allowed to non-suit or amend up to three days before the hearing to avoid this cost shifting device. Many commentators believe that this rule will be rarely used given the risk of cost shifting.

Medical Expense Affidavit

This change provides a form affidavit for proof of medical expenses that comports with the Supreme Court's *Haygood v. Escobedo* decision.

These rules will have an effect on almost all civil cases and every civil litigator should review them before filing his or her next pleading.

The Honorable Martin J. Hoffman is presiding judge of the 68th Judicial District Court in Dallas, Texas.

DBA Pro Bono Golf Tournament

The 21st annual DBA Pro Bono Golf Tournament will be Thursday, May 2nd at Brookhaven Country Club. Young lawyers are encouraged to play. This is a fun way to network and the tournament offers many chances to win great prizes!

Register online at www.dallasbar.org. For more information, contact Rhonda Thornton, rthornton@dallasbar.org.

DAYL Partners with the North Texas Food Bank

by Aaron Capps

On February 2, nearly twenty-five attorneys gave up their Saturday afternoon to participate in an activity benefiting a number of North Texas families in need. These attorneys gave up what we all value the most—free time—to work in a warehouse from 1:00 p.m. to 3:30 p.m. Some filled plastic bags with snacks for kids. Others filled boxes with manifold food and drinks for families. The volunteers did all this as part of Generation Generosity.

The volunteers far exceeded the North Texas Food Bank's expectations. For instance, normally, a group of volunteers is able to load eight pallets with boxes of food and drinks. That's a normal day. On February 2, the DAYL volunteers loaded ten pallets. Those ten pallets held 480 boxes of food. Those 480 boxes will feed more than 11,000 hungry families. If not for the North Texas Food Bank running out of boxes, the volunteers would have probably loaded another two pallets and fed 2,000 additional families. Con-

sider that the goal for next year.

What the volunteers accomplished is something we should all commend. Despite having a number of other obligations, they came out and worked for something greater than themselves. Sweaty and tired, the volunteers left the warehouse with a sense of accomplish-

ment and pride. Deservedly so; they certainly earned it.

So the next time you are looking for something to do on the weekend other than work, think about volunteering at the North Texas Food Bank. To find out more information about volunteer opportunities visit www.ntfb.org.



DAYL members spent the morning volunteering at the North Texas Food Bank for its February Generation Generosity Project. Over ten pallets of food were sorted and organized so they could be distributed to people across North Texas.

Guiding Slight – Be a Mentor to Your Peers

by Christian Kelso

Lots of people tell us to get advice. They tell us to join this group, or that and find a mentor. But one thing I don't hear very often is advice on being a mentor, particularly with regard to others in my peer group. I've mentored a number of my peers on a number of topics from writing a resume to brewing beer and without exception, I've found the experience rewarding. Here are a few pointers a would-be mentor might find helpful:

First, a mentoring relationship can be life-long or it can be for only one encounter. There is no need to over-extend the commitment.

Second, a person is qualified to men-

tor anyone who has less experience than they do in a given area. Age facilitates this, but does not set the rule. If you are reading this article, you are probably qualified to mentor your boss on using Facebook.

Third, mentoring is mostly about listening. Your job is to provide guidance and feedback, not show off how smart you are. If you want all the attention, write an article.

Fourth, be proactive. Most people are loathe to ask for help, so offer it. What's the worst that can happen?

Fifth, meet in person. This is the best way to really connect. It's also a good way to get free beer.

Finally, don't be in a rush. If you make the commitment to help someone out, stay

with them as long as they need. If a mutually convenient meeting time (like lunch) is limited, expect to meet multiple times.

Admittedly, I have adopted a somewhat relaxed understanding of mentoring, but the overriding principal is sound. Helping people out helps the helper just as much as it helps the helpee. Mentoring will also help build your network and make you a more successful, fulfilled lawyer.

Christian S. Kelso, Esq. is of counsel at Malonf, Lynch, Jackson & Swinson, P.C. He practices primarily in the areas of estate and tax planning. If you have a comment or suggestion for Guiding Slight, please email Christian at ckelso@mljs.net.

Bracket Busted: Just How Legal Is Your Office NCAA Tournament Pool?

by Tyler M. Beas and Jennifer Butler Wells

March is just around the corner, and that can mean only one thing for the millions of sports fans across the United States – the NCAA Basketball Championship Tournament. With the Tournament comes everyone’s other favorite March activity – the office bracket pool! But just how legal IS that office bracket pool? The bad news is, strictly speaking, most office bracket pools are likely illegal. But have no fear, we think you’ll likely stay out of trouble this basketball season.

We all know the basic scenario: an individual pays a sum of money for a blank bracket, and fills out that bracket according to who they think will win each matchup. The winner(s) of the bracket pool, determined by who correctly predicts the most games, receives a share of the money collected.

Is that scenario (which we all may have done a time or two) illegal gambling in Texas? Unfortunately, the answer is technically yes. Chapter 47 of the Texas Penal Code provides the governing law addressing gambling and lotteries. According to § 47.02(a)(1), which defines the offense of Gambling, “[a] person commits an offense if he . . . makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest[.]” A “bet” is defined in § 47.01(1) of the Texas Penal Code as “an agreement to win or lose something of value solely or partially by chance.”

Therefore, per the above-cited provisions of the Texas Penal Code, our basic bracket pool would qualify as Gambling. The giving of \$10 for a blank bracket, with the ultimate opportunity to win a share of the pot of money, would be considered an agreement to win something of value solely or partially by chance.

However, if the basic set-up is altered and there is no possibility of winning “anything of value” (*i.e.* cash) for having the most correct bracket, then no bet was

placed, and thus the bracket pool is not Gambling. *See* Tex. Att’y Gen. Op. No. GA-0804 (2010) (stating that paying money to participate is not considered losing something of value by chance, and because the participants don’t stand to win anything, there is no ability to win anything of value by chance).

Texas also has an affirmative defense that exists to prevent prosecution for Gambling. Section 47.02(b) of the Texas Penal Code states “[i]t is a defense to prosecution under this section that: (1) the actor engaged in gambling in a private place; (2) no person received any economic benefit other than personal winnings; and (3) except for the advantage of skill or luck, the risks of losing and the chances of winning are the same for all participants.” The first element is satisfied because a bracket pool conducted within a company, and not open to the public at large, is considered to have occurred in a private place. *See* Texas Penal Code § 47.01(8) (defining private place as a place to which the public does not have access, and excluding common areas of office buildings); *cf.* Tex. Att’y Gen. Op. No. DM-344 (1995) (stating the general principle that “if the public generally, or a significant number of others, had access to the games, such access would [the Attorney General] believe, defeat a claim that the actors engaged in gambling in a pri-

ivate place”). The second and third elements would also be satisfied, as the winners of the bracket would only receive personal winnings, and the risk of losing and chance of winning are the same for all participants.

Although most NCAA Tournament office pools will likely be in violation of §47.02 of the Texas Penal Code, as well as other provisions governing Gambling Promotion (§47.03), Keeping a Gambling Place (§47.04), Communicating Gambling Information (§47.05), and Possession of Gambling Devices (§47.06), the risk of prosecution for a violation remains small. Several current and former District Attorneys have commented publicly about office pools, and uniformly agree that the statute is not designed to apply to small-time office pools, but rather is used to combat full-time bookies and gambling halls. *See* Steve Myers, *Are Those NCAA Brackets Legal?*, Connect Amarillo (March 15, 2011, 6:30 AM), http://www.connectamarillo.com/directory/legal/story.aspx?id=592618#.UR5voqV4w_c. So unless you’ve turned your office into a Vegas sports book, you should be safe to enter your bracket in the office pool. Good luck and let the Madness begin!

Jennifer Wells and Tyler Beas are associates practicing in the business litigation section of Haynes and Boone, LLP.



To sign up to be an INcomer, visit www.dayl.com/pdf/incomer.pdf
To sign up to be an INthusiast, visit www.dayl.com/pdf/inthusiast.pdf

January 2013 Generation Generosity Event at the SoupMobile

