



August 2014

Vol. 31, No. 8

THE DICTA

The Docket

August 9 (Saturday)

The Big Give Back
10:00 a.m., Various Locations

August 11 (Monday)

DAYL Fashion in the Law Committee Meeting
6:00 p.m., BBC

August 12 (Tuesday)

DAYL Lawyers Promoting Diversity Committee
Noon, Belo Mansion

August 12 (Tuesday)

DAYL Young Partners Committee Meeting
Noon, Belo Mansion

August 12 (Tuesday)

Best Practices in State Courts
Noon, George Allen Courthouse

August 13 (Wednesday)

DAYL Lunch and Learn CLE
Noon, Belo Mansion

August 13 (Wednesday)

DAYL Attorneys Serving the Troops Committee
Noon, Cafe Express Mockingbird Station

August 13 (Wednesday)

DAYL Assisting Lawyers in Transition Committee
12:30 p.m., Grub Burger Bar

August 13 (Wednesday)

DAYL Solo / Small Firm Round Table
6:00 p.m., Stoneleigh P

August 13 (Wednesday)

DAYL Generation Generosity Service Event
6:00 p.m., Promise House

August 19 (Tuesday)

DAYL Elder Law Committee Meeting
Noon, Belo Mansion

August 20 (Wednesday)

DAYL Solo / Small Firm Committee CLE
Noon, Belo Mansion

August 21 (Thursday)

DAYL Animal Welfare Committee Meeting
Noon, Belo Mansion

August 25 (Monday)

DAYL Solo & Small Firm Committee Meeting
Noon, Belo Mansion

August 26 (Tuesday)

DAYL Aid to the Homeless Committee Meeting
Noon, Meso Mayo

August 28 (Thursday)

DAYL Social
6:00 p.m., Barter

DAYL ONE TO WATCH

Whitney Keltch has been selected as the August 2014 DAYL One to Watch! To find out why, visit www.dayl.com.

DAYL Will Barter for a Good Time

Join DAYL at Barter in Uptown (3232 McKinney Ave., Dallas, TX 75204) for our next Social on **August 28, 2014** from 6:00 p.m. to 8:00 p.m.! Our sponsor, Nannies On The Go, will provide two drink tickets and appetizers for attendees. Come experience one of Dallas's hot new spots, and the 2014 Tastemakers Awards Best New Restaurant, from consulting chef Tim Love! The cost is \$3.00 for DAYL members is \$5.00 for non-members.

Nannies On The Go offers exceptional professional childcare and nanny placement services in the DFW area. Nannies On The Go does the homework for you and provides pre-screened, reliable and experienced childcare and nanny professionals. Nannies On The Go can find you full-time, part-time, or temporary childcare.

For additional information, visit www.NanniesOnTheGo.net or feel free to contact **Sharon Moloney** (sharon@nanniesonthego.net).

Coffee-->Connections-->Careers: Professional Opportunities

The DAYL Assisting Lawyers in Transition (ALIT) Committee will be holding its second Coffee-->Connections-->Careers breakfast event at 7:30 a.m. on **Friday, September 5, 2014** at Breadwinners (3301 McKinney Ave., Dallas, TX 75204). **David Schulte** of Thompson & Knight, LLP will present on interview skills and **Chad Ruback** of The Ruback Law Firm will present on personal marketing. This event is a great opportunity for young lawyers to learn how to maximize professional networking opportunities and gain valuable insight into in-

terviews.

The Coffee-->Connections-->Careers breakfast event will kick off ALIT's Mock Interview Month event, which will give attendees the opportunity to practice the skills they have learned. The ALIT Committee will be pairing young attorneys (including those that have taken the bar exam and are waiting for results) with more experienced attorneys for onsite mock interviews. Participants are encouraged to schedule and complete the mock interviews during the month of September. Watch your email or contact **Cherie Harris** (cherieh@dayl.com) for details.

IP Law Basics for Liberal Arts Majors

DAYL will host a CLE program on **Wednesday, August 13th**, at the Belo Mansion from noon-1:00 p.m. on the key basic issues young lawyers should know regarding intellectual property law. The program will focus on giving "liberal arts major" attorneys who specialize in non-IP areas of law the tools to recognize IP issues, speak intelligently with their clients about those issues and know when, ethically, it is time to call in a IP law specialist.

The following speakers are confirmed: **Elaxis Jones**, a patent prosecutor at Conley Rose, P.C.; **Daniel R. Pearson**, a patent litigator at Caldwell Cassady & Curry; and **Andrea Perez Affleck**, a copyright and trademark attorney at Kessler Collins, P.C.

The panel will be moderated by Bill S. Richmond of Gruber Hurst Johansen Hail Shank LLP. There is no fee for DAYL members to attend; the non-member fee is \$10. Email **Cherie Harris** at cherieh@dayl.com to RSVP.

THE DICTA

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Copy Deadline for September Issue:

August 15, 2014

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From the President

The Big Give Back

-“Go big or go home.” *Unknown*



Meyling Ly

I’m clearly dating myself, but about 15 years ago, I recall being completely enamored by my first exposure to the annual Texas A&M’s Big Event, where undergraduate Aggies volunteer for an entire day in the local community.* College students mowed lawns, painted fences, and cleaned garages – all to say “thank you” to the local community for taking over their town for nine months out the year.

Fast forward to last year, when I started brainstorming on what I might want to accomplish as president of DAYL. I heard that DAYL used to have a People’s Law School program, where young lawyers answered simple legal questions and presented on different areas of the law to members of the public. I knew that the DAYL Ask-A-Lawyer committee continued to host quarterly free legal advice clinics. I also knew that the Dallas Hispanic Bar Association had great success over the past few years with their Conozcan Sus Derechos event. Finally, I recall as a former board member and former chair of the community service committee for the Dallas Asian American Bar Association, they also wanted to host a free legal advice clinic. I also wanted to do something that would unite lawyers in Dallas together – regardless of our affinity groups. And that’s how the Big Give Back was born.

And now on **Saturday, August 9, 2014** from 10 a.m. to 2:30 p.m., DAYL, along with J.L. Turner Legal Association, Dallas Hispanic Bar Association, Dallas Asian American Bar Association, Dallas Women Lawyers Association, Dallas Gay and Lesbian Bar Association, and the Dallas Volunteer Attorney Program will be hosting three free legal advice clinics, with the assistance of a grant from the **Texas Young Lawyers Association**.

Not only will members of the public be able to have their simple legal questions answered, but they will also receive information regarding their rights in different areas of the law. Members of the public do not have to meet any income requirements, unlike the traditional clinics hosted by DVAP; they just have to show up at one of the three locations:

- The Buddhist Center of Dallas, 8484 Stults Rd., Dallas, TX 75243
- Eastfield Community College, 802 S. Buckner, Dallas, TX 75217
- Dallas Public Library, 2951 South Hampton Rd., Dallas, TX 75224

The sobering truth is that while nearly six million Texans qualify for legal aid, the Texas legal community only meets 20 percent of the need. Of course, this doesn’t even count the Texans that don’t necessarily qualify for legal aid, but still cannot afford to seek legal assistance.

Volunteers from all ages and experience levels will be there to answer the most common questions relate to family, criminal, landlord/tenant, wills, immigration, bankruptcy, employment, and small claim disputes. I would like to give a shout out to my DAYL co-chairs Leslie Chaggaris and Mackenzie Wallace, the DAYL Ask-A-Lawyer Committee, our Executive Director Cherie Harris, and sister bar co-chairs: Tramaine Scott of J.L. Turner, John Ting & Farheen Siddiqi of DAABA, Demian Camacho of DHBA, Lacy Durham of DWLA, Farrah Ahmed of DGLBA, and Michelle Alden of DVAP and of course, thank you to my sister bar presidents: Tatiana Alexander, Sakina Rasheed, Elisabeth Wilson, and Alyson Blatney. Also, a special thanks to Michael Holmes with Platinum IDS for donating free copies all of the TYLA legal resources to handout at the clinics!

*Whoop! – Fightin’ Texas Aggie Class of 2003

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www.daylcharityball.com



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The DAYL Judicial Intern Committee invites you to attend a panel discussion on "Best Practices in State Courts." The panel will consist of the Honorable Martin Hoffman (presiding judge of the 68th Judicial District Court); the Honorable Phyllis Lister Brown (presiding judge of the 162nd Judicial District Court); Judge Ernest White (presiding judge of the 194th District Court) and the Honorable Tena Callahan (presiding judge of the 302nd Family District Court). Dennis Siaw-Lathey will serve as the moderator.

The panel will discuss "Best Practices" for young lawyers to follow in areas ranging from interacting with court personnel to presenting oral argument at hearings. The program will take place on August 12, 2014, beginning at noon, in the Merrill Hartman Memorial Courtroom at the George L. Allen, Sr. Courts Building, 600 Commerce St., Dallas, Texas 75202. Parking is available for a fee. Lunch will not be available so please eat before or after the program. This program has been approved for 1 credit hour of CLE. RSVP to Cherie Harris.

Lessons Learned from DAYL's Civility and Professionalism CLE

by Sara Romine

In case you missed it, DAYL's CLE Committee recently sponsored a panel discussion on how to zealously advocate for your client without sacrificing civility and professionalism. **Magistrate Judge Renee Toliver** of the Northern District of Texas, **Michael Hurst** of Gruber Hurst Johansen Hail and Shank LLP, and **Rob Crain** of Crain Lewis shared their insights into the state of legal professionalism, the factors causing unprofessional or uncivil behavior, and ways to deal with difficult opposing counsel. Here are a few insights shared by the panel:

1. Unprofessional or uncivil behavior often drives litigation costs up, hurting both the offending lawyer and their client.

2. You can respectfully disagree with your opposing counsel without making the dispute personal and without resort to inflammatory and serious allegations like, "S/he is misrepresenting the facts!"

3. If you are dealing with difficult or unprofessional opposing counsel, document everything. Do not be afraid to seek judicial relief if the problem persists and hampers your ability to move the case forward in a timely fashion.

4. Keep in mind that your communications with opposing counsel may become "Exhibit A" to a future motion. An email sent in a fit of anger or frustration may color a judge's view of the lawyers and the case.

5. Rise above it. Retaliating in response to unprofessional behavior hurts both

parties and the reputation of the legal profession as a whole.

6. Judges do not appreciate or find persuasive inflammatory allegations in oral argument or in briefing. Stick to the law and facts and avoid hyperbole or ad hominem attacks.

7. Choose to review and adopt the Texas Lawyer's Creed:

<http://www.texasbar.com/Content/NavigationMenu/ForLawyers/ResourceGuides/EthicsResources/TexasLawyersCreedPoster.pdf>

8. Mentoring is extremely important in building a more civil and professional legal community. Take advantage of the resources available to you within your firm and the broader legal community.

The DAYL Walk for Wellness 30-day Pedometer Challenge will begin August 12 and will culminate with the Freedom Run on September 11, 2014. All DAYL members are encouraged to participate and see who can log the most steps during that 30-day period. Gift card prizes, sponsored by Simon | Paschal PLLC, will be awarded to the top three finishers.

DAYL pedometers are available at the DAYL office, located at the Belo Mansion, 2101 Ross Avenue, Dallas Texas 75201. Please contact Cherie Harris to arrange a time to pick up your pedometer and participate in the DAYL Walk for Wellness!

The Jimmy and Rosalyn Carter Work Project is coming to DFW October 5-11, 2014.

Please Save the Date and volunteer to help!

DAYL needs volunteers especially on November 8 to finish up minor projects in connection with the Carter Work Project.

Email Cherie Harris (cherieh@dayl.com) for details.

DAYL Pub Trivia is BACK

Join us on Tuesday, September 16th, 2014 beginning at 7:00 p.m. at State and Allen located 2400 Allen Street Dallas, Texas 75204 for Pub Trivia.

Pub Trivia is a trivia game consisting of teams where every team can answer every question. There are no buzzers. A moderator asks a question and every team can collaborate with their teammates and write down an answer and present it on a board when time is called. Some of the subjects we will touch upon are United States Presidents, the Texas State Fair, Beer, and Emmys. Free for members, \$5 for non-members. If interested, RSVP to Cherie Harris (cherieh@dayl.com).

Does an Asset Deal Really Protect You From Liability?

by Andrew K. Jenkins

One of the biggest and most fundamental decisions in a merger transaction is whether to do a stock deal (buy the stock of the target company) or an asset deal (buy the assets of the target company). The conventional wisdom is that you do an asset deal because it leaves all of the liability of the target with the target.

But is it true?

In a word, no. Well, not really. While most state laws and traditional common law may state that an asset purchaser who does not expressly assume the liabilities of an asset seller is not liable for the liabilities of the seller, there are enough carve outs from this general rule that in essence, the general rule general at best. Many statutes impose liability on the buyer regardless of the deal structure. For example, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") imposes liability on an asset purchaser who substantially continues the business of the asset seller. Since the purpose of buying a business is to substantially continue the business, it would seem that CERCLA liability would attach regardless.

In the employment law realm, the Fair Labor Standards Act, the Employee Retirement Income Security Act, and the Family and Medical Leave Act all impose liability on an asset buyer. One of the major common factors in determining successor liability is notice or knowledge

of a liability under these acts. So, unless an asset buyer completely abdicates its responsibility to conduct due diligence, it would be hard to believe that such buyer did not have notice of the liabilities.

Also, a number of states will hold the buyer in an asset deal liable for the products liability of the seller. Presumably the object of buying a company is to continue to sell what the target sold. If you are going to force an asset sale, you should be sure that none of the seller's goods were sold in a state that recognizes this source of successor liability.

Additionally, a number of states recognize the de facto merger doctrine (Texas is not one of them). The four factors in determining whether an asset sale is a "de facto merger" are: (1) continuity of ownership, (2) cessation of ordinary business by, and dissolution of, the predecessor as soon as practicable, (3) assumption by the successor of liabilities ordinarily necessary for uninterrupted continuation of the business, and (4) continuity of the management, personnel, physical location and general business operations.

While all four of these factors must be present, many deals done for financial reasons (rather than strategic reasons) can easily fall into this trap. For example, an investor who wishes to buy a controlling interest in a business will, by definition, have the seller as an equity partner in the successor. Also, since the seller will want the cash portion of the purchase price

distribution of the consideration out of the seller entity may effectively dissolve the seller entity by operation of law. The successor will have to continue vendor agreements, leases, etc. (at least for a little while) in order to continue the business. Lastly, nearly all (if not all) of the personnel – management or otherwise – will continue on with the successor (again, at least for a little while).

Another consideration in protecting the buyer from liability is insurance. The seller may have insurance in place to cover a good number of the potential liabilities. However, that is the seller's insurance and getting the buyer insured so that there are no gaps may be overly difficult and expensive. By doing a stock deal, the seller's will remain in place because the seller itself was sold.

Since employment, environmental, products, and employee benefits are major sources of liability that are reasonably common among all possible mergers, it should be clear that the "conventional wisdom" is at least a little bit flawed. An asset deal should not be the default choice. Since many liabilities may attach to the buyer regardless of the deal structure, this author recommends doing a stock deal unless the buyer is trying to avoid a specific liability. The buyer will be able to avail itself of the seller's insurance already in place. And if the buyer is trying to avoid a specific liability, make certain that there is some provision made for the satisfaction of that liability prior to close.

The DAYL Lawyers Serving Children Committee is sponsoring this month's Generation Generosity event. We will be going to Promise House to do a game/movie night for the kids there. For those of you who don't know about Promise House, it helps to provide shelter and other valuable services for kids who need it. We hope that you can attend. The details are as follows:

Where: Promise House

When: Wednesday, August 13, 2014, 6:00 - 8:00 p.m.

Parking: Parking is available across the street from the main building

RSVP: Cherie Harris (cherieh@dayl.com)

Flag Football is Back!

Are you ready for some (flag) football! The 2014 Flag Football season will kick off on September 17, 2014. We will try to play on Wednesday nights at Johnsons Outpost (3325 Valley View Lane). While there is no coed league, women are encouraged to play in any of the leagues.

After a long and illustrious reign as commissioner, **Jay Harnett** has (finally) stepped down. In honor of Jay's years of service, new commissioner, **Dawud Crooms**, continues Jay's challenge that all large firms sponsor at least one team. If you are interested in starting a team, but do not have enough people, please contact the commissioner and we will help facilitate joint teams.

This year's entry fee is \$700. Please sign up by September 5, 2014. Despite the change in commissioner, one thing remains the same. The rules are available through the Commissioner's office and are always subject to change at the last minute in games involving the commissioner. To sign up use the form below. Please direct questions to dawud.crooms@haynesboone.com.

Now for the customary recap of the

2013 finale.

The 2013 Championship Game featured Haynes and Boone against Fee Smith. In a surprising strategic move, Haynes and Boone showed up with only 6 players (instead of the full 8). In a modern day Battle of Thermopylae, Haynes and Boone stepped onto the field and drove down the field for a quick score. Haynes and Boone then used Jedi-mind games and a swarming monkey defense like the great 46 Defense of the 85 Bears led by Adrian Garcia and Thaddeus Chase to shut down Fee Smith's offense. After a last second pass bounced off the hands of a streaking Nick Nelson in the corner of the end zone for what would have been a highlight reel score, the game would go into half-time 7-0 in favor of the Little Giants aka Haynes and Boone.

The second half looked to start strong for Fee Smith, as they drove down the field, only to have Thaddeus Chase bait the QB into throwing over the middle in the end zone, whereby the acrobatic and fleet-footed Chase tipped the ball to himself and galloped down the right sideline like a Gazelle for the Pick 6. Haynes and Boone converted the PAT to go up 14-0. On the next possession, Fee Smith was driving again

until FS, Dawud "I Can't Wait to Be Commish" Crooms picked off a deep pass and returned it to about mid-field. Haynes and Boone continued to use its disarming 6-man offense to drive down the field for a TD to Adrian Garcia and completed the PAT (perhaps the first time in its storied history that Haynes and Boone scored all of its PATs) to go up 21-0. With time as its enemy, Fee Smith couldn't muster any offense and the mercy-rule was invoked with Haynes and Boone winning 21-0. Despite being a hot-ticket and all press passes being claimed, the DAYL Championship Game once more eluded the local news and evening's Sportscenter.

Do you want to learn how to reconcile your IOLTA account? Maybe earn some ethics credit? Come check out the "Accounting and Billing in Small Firms" part of DAYL Solo and Small Firm's "How To" series.

Additional topics to be covered include internal controls for a small offices, items that should be in your employees' personnel files, documentation needed to keep the IRS happy, employee vs 1099 classification, and productivity reports owner should be monitoring.

The program will be held on Wednesday, August 20, 2014 at noon at the Belo Mansion. There is no charge for DAYL members to attend; the non-member fee is \$10. 1.00 hour of CLE credit is available, including .25 hours of ethics credit. RSVP to Cherie Harris (cherieh@dayl.com).

TEAM NAME: _____

TEAM MANAGER CONTACT INFORMATION (NAME, ADDRESS, TELEPHONE AND EMAIL)

ROSTER:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

LEAGUE PREFERENCE (A OR B) _____

PLEASE COMPLETE AND RETURN THE FOOTBALL REGISTRATION FORM AND PAYMENT (PAYABLE TO DAYL) BY 9/5/2014 TO: CHERIE HARRIS, DAYL, 2101 ROSS AVENUE, DALLAS, TEXAS 75201. CONTACT DAWUD CROOMS (DAWUD.CROOMS@HAYNESBOONE.COM) FOR MORE INFORMATION.