



December 2014

Vol. 31, No. 12

# THE DICTA

## The Docket

December 10 (Wednesday)  
DAYL Lawyers Promoting Diversity Committee Meeting  
Noon, Belo Mansion

December 10 (Wednesday)  
DAYL Lunch and Learn CLE  
Noon, Belo Mansion

December 10 (Wednesday)  
DAYL Law Student Assistance Committee Meeting  
6:30 p.m., Capitol Pub

December 10 (Wednesday)  
DAYL Solo / Small Firm Roundtable  
6:00 p.m., Stoneleigh P

December 11 (Thursday)  
DAYL Foundation Fellows Luncheon  
11:30 a.m., Belo Mansion

December 11 (Thursday)  
DAYL Tacky Sweater Holiday Party  
6:00 p.m., Henderson Tap House

December 16 (Tuesday)  
DAYL Aid to the Homeless Committee Meeting  
Noon, Meso Maya

December 18 (Thursday)  
DAYL Animal Welfare Committee Meeting  
Noon, Belo Mansion

December 18 (Thursday)  
DAYL Young In-House Lawyers Happy Hour  
6:00 p.m., Quarter Bar

Happy Holidays  
and Cheers to  
Healthy, Wealthy,  
and Wise New  
Year!



# MAY YOUR SWEATERS BE UGLY & BRIGHT

DALLAS ASSOCIATION OF YOUNG LAWYERS'

## TACKY SWEATER PARTY

THURSDAY, DECEMBER 11, 2014  
6:00 - 8:00PM  
HENDERSON TAP HOUSE  
2323 N HENDERSON AVENUE  
DALLAS, TX 75206

BRING A NEW & UNWRAPPED TOY TO BE  
DONATED TO TEXAS SCOTTISH RITE CHILDREN'S HOSPITAL  
A TOY WILL GET YOU FREE ADMISSION (& 2 FREE DRINK TICKETS)!



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PRIZE FOR THE UGLIEST SWEATER!



## 2015 Board of Directors Elected

**M**embers of the DAYL recently elected the following people to the Board of Directors in 2015: Secretary: **Charlie Gearing**; Directors: **Stefanie Bradshaw, Andy Jenkins, Tim Newman, Dustin Paschal, Ann Chao, Justin Gobert, Barbara Pelaez, Whitney Keltch, Alex Bolton, and Jennifer Lee.**

**Jonathan Childers** will serve as the organization's President. **Stephanie Gause** will serve as President-elect, **Paul Simon** will be Vice President, and **Jennifer Larson** will be Treasurer. **Meyling Ly** will be Immediate Past President.

In addition the following people were appointed to serve on the DAYL Board of Directors as a representative from one

of our sister bar organizations: **John Ting** from DAABA; **Ayesha Rafi** from DWLA; **Jodi McShan** from DHBA; and **Terry James** from J.L. Turner Legal Association.

**Nicole Munoz** and **Ciera Norris** will serve as a liaison between TAMU School of Law and SMU Dedman School of Law, respectively, until May.

# THE DICTA

Jennifer Lee, Editor

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www.dayl.com  
Cherie Harris  
Executive Director

## DAYL BOARD OF DIRECTORS OFFICERS

Meyling Ly, *President*  
Jonathan Childers, *President-elect*  
Stephanie Gause, *Vice President*  
Paul Simon, *Treasurer*  
Jennifer Lee, *Secretary*  
Sarah Rogers, *Imm. Past President*

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Dustin Paschal  
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John Ting, *DAABA Representative*

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Bill Gardner, *TYLA Director*  
Jennifer Evans Morris, *Chair, Fellows  
of the DAYL Foundation*  
Ciera Norris, *SMU Law Student Rep*  
Nicole Munoz, *Texas A&M Law Student Rep*

Copy Deadline for January Issue:

**December 15, 2014**

**Charles Gearing**

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Email: cmg@hanshawkennedy.com

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## From the President

# Passing the Torch

*The things you do for yourself are gone when you are gone, but the things you do for others remain as your legacy. - Kalu Ndukwe Kalu*



Meyling Ly

As a marathon runner, I can't help but compare my life experiences to running – and being president of DAYL is no different. For me, having the role of president was not about winning an individual race; rather, it was much more like a marathon relay. My goal was to run my leg of the race as well as I could – so that our team could ultimately share the victory at the finish line. My most important thought? *Don't drop the torch.*

As I near the end of my leg, despite feeling a little like I'm running on empty, I also feel overwhelmingly fulfilled by all the good that we have accomplished together. Through the hard work of our committee chairs and committee members, through the leadership of our board members and Executive Director, and through the support of our members, I'm proud to report to you that we have completed over 140 projects and programs this year with about 40 of them being completely new.

Together we packed backpacks for abused and neglected children, provided free legal advice for hundreds of Dallas citizens, served lunch to the homeless, created crafts with Senior Citizens and helped build a home for Habitat. We served children, the elderly, veterans, the homeless, victims of domestic violence, animals and one another – including law students and those in transition. Together, we have raised thousands of dollars for Equal Access to Justice, Assist the Officer Foundation, and EPIC. We challenged one another's ideas on diversity in the workplace, collaborated on ways to combat stress and depression in the profession and raised our awareness for the importance

of wellness within our practice. Not only did we provide each other with continuing legal education, but we also provided each other with leadership education and opportunities, a seminar on financial literacy, networking training and opportunities, and nuts and bolts workshops. We also had some fun and developed friendships along the way – through our sports leagues (winning kickball!), socials, Leadership Class Reunion and Past President's Dinner.

None of this would have been possible without each of you – and while I can't recognize everyone for their contributions, I would be remiss not to try.

To our members, thank you for your membership and attendance at our events. Without you, we would not exist! To the extent you have not been as active as you like, there's always next year. To the extent you are not engaged because there's nothing of interest to you, please let us know what's missing – we truly want this to be your bar association.

To our sponsors, I can't thank you enough for your financial support. Many of our programs literally could not happen without you.

To the Dallas Bar Association, thank you just doesn't seem like enough. Your financial support and leadership is priceless. Shoutout to President **Scott McElhaney** for such a successful and inspirational year!

To my sister bars – especially the sister bar presidents: **Elisabeth Wilson**, **Alyson Blatney**, **Sakina Rasheed** and **Tatiana Waits** – our sisterhood was such an amazing support for me. I loved our collaboration and can't wait to see more in future years to come.

*(continued on page 3)*

# Passing the Torch

(continued from page 2)

To the Dallas Judiciary – thank you for taking time on and off the bench to teach, guide and mentor us. We are going to be better lawyers when we grow up because of you.

To the DAYL Leadership Class facilitators, we are already better leaders because of you.

To this year's committee chairs and committee members, thank you for making DAYL look so good. I say all the time that DAYL is good people doing great things. You are the good people I'm talking about.

To my board, I was humbled this year by your unwavering support, generosity of time, and kindness. I really do think you're the best board any president could have. I wish there was some way our members could witness all that you do – from attending numerous DAYL events to helping the committees bring their ideas to fruition, from your thoughtful contributions at our monthly board meetings over tough issues to making sure new members feel welcome and are engaged – thank you for all that you do.

To our Executive Director and my

friend **Cherie Harris**, you are the constant behind all of DAYL's success. You are the first friendly face for our new members, the dispenser of historical knowledge, the voice of reason, the most organized and responsive person I know. With you as our Executive Director, I knew that I could never really drop the torch. In a way, I think you've been the one who has really been carrying it all along.

Last but not least – thank you to my family – **Little & Jason**. For those that follow me on Twitter, I'm sure they're sick of my shoutouts to my firm, but I really mean it – I work with incredibly talented lawyers who are also great people. And as for my Jason, he is the sole reason why I've been able to devote so much time to DAYL. I'm so lucky that he decided to marry me this year despite all the times I left the house/laundry/pups/delivering dinner to my office on his lap.

As I pass the torch to **Jonathan Childers**, his board, his committee chairs and the Leadership Class of 2014, I wanted to share a couple of final thoughts:

First, I know firsthand that being a young

lawyer is hard. Sometimes it seems like there are too many obstacles: economy/stress/billing/discovery/deadlines/depression/studentloans – all of which can really make us lose sight of what being a lawyer means but I submit to you that this is where DAYL can come in. Certainly, it's not a panacea for the more difficult aspects of our practice, but for me personally, DAYL has provided me a lifeline – not only support by way of lifelong friends but also inspiration and a higher calling. DAYL reminds me of what being a lawyer should mean. It is more than just a job. It is a noble profession, where we have the privilege (and duty) to serve others. I sincerely believe that I am a better person and lawyer from being in DAYL. #Winning

Second, I found this quote that I found to be a fitting ending to my last presidential article: "We cannot hold a torch to light another's path without brightening our own." To the future leaders of DAYL, I hope that you will continue to light others' paths and most importantly, pass the torch. It's such an incredible legacy to be a part of. #YOLO

## Martha Hardwick Hofmeister to be Recognized at the DAYL Foundation Fellows Reception

The DAYL Foundation annual luncheon will be held on **Thursday, December 11, 2014** at 11:30 a.m. at the

Belo Mansion. Texas Supreme Court **Justice Debra Lehrmann** will be the keynote speaker and Dallas attorney **Martha Hardwick Hofmeister** will be presented with the annual Award of Excellence. This prestigious award is given to a DAYL Foundation Fellow who has shown a continued commitment to community outreach.

During the luncheon, the DAYL Foundation will also present a law student from

SMU Dedman School of Law and a law student from Texas A&M School of Law with a scholarship award for their dedication to community ser-

vice and outreach.

The DAYL Foundation is a 501(c)(3) organization established for charitable and educational purposes. It has given over \$175,000 to organizations that support legal education and causes.

The cost to attend the luncheon is \$35 per person and includes a plated lunch. Tables of 10 are available for \$350. The luncheon is open to all. Contact **Cherie Harris** (cherieh@dayl.com) if you have any questions. Reservations and payment must be made in advance by contacting **Cherie Harris** (cherieh@dayl.com) or by visiting <http://tinyurl.com/opwdur3>.



Martha Hardwick Hofmeister



Justice Debra Lehrmann

# One EPIC Night Indeed

by Jennifer Larson

**N**early 500 attendees came together to support EPIC and Dallas Area Habitat for Humanity at the inaugural DAYL Charity Ball. Attendees gathered at one of the City's hottest new venues, 3015 at Trinity Groves, and enjoyed dinner and dessert by Food Network Producer-Chef **Sharon Van Meter**. Guests danced to the music of Signed Sealed Delivered and sipped on cocktails from the Deep Eddy Vodka Bar, the Sazerac Whis-

key Bar, or the Ben E. Keith Beer and Wine Bar. Highlights of the night included photos on the step and repeat, remarks from Dallas Area Habitat for Humanity CEO **Bill Hall**, and a live auction hosted by Heritage Auctions. When this article went to press, proceeds from the DAYL Charity Ball were estimated at over \$40,000. The 2013 DAYL Leadership Class is grateful for the outpouring of support for our first DAYL Charity Ball. We are beyond humbled that so many

of our mentors and colleagues in the legal community attended the event. Thank you also to the businesses, law firms, and individuals who sponsored the event and donated items for the auction. We are hopeful that our contribution will allow EPIC to continue to fulfill its vision for a Dallas where every neighborhood is safe and secure, home ownership is possible and accessible, and job-creating economic development is not only achievable but also sustainable.





## Pre-Engagement Ethical Considerations When Courting Potential Clients

**D**AYL will host an Ethics CLE program on **Wednesday, December 10th**, at the Belo Mansion from Noon to 1pm on the best practices and pitfalls young lawyers should consider when pitching their legal services to potential clients. The program will focus on providing anecdotal guidance from past cases

and ethical restrictions on such issues as what qualifications can you claim, what past case experience/information can you divulge, avoiding barratry, and heading off potential non-disclosure issues that could come up if you do land the client.

The following speakers are confirmed: **Kelly M. Hinson**, a partner at Carrington Coleman Sloman & Blumental LLP; and

**Thomas M. Horan II**, an associate at Thompson Coe Cousins & Irons LLP. 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. Please email **Cherie Harris** at [cherieh@dayl.com](mailto:cherieh@dayl.com) to RSVP.

Thank you to HG Litigation for sponsoring the DAYL Tacky Sweater Social in December. With a nationwide network of Certified Court Reporters and Legal Videographers as well as a Dallas-based headquarters, HG Deposition and Litigation Services is your premier choice for Litigation Support. HG has a client driven focus and is always one step ahead with advanced technology. For more information, please visit [www.hglitigation.com](http://www.hglitigation.com) or contact them at 888.656.DEPO.

## New Lawyers Take the Oath!

by Alex Bolton

**T**he Dallas Association of Young Lawyers was pleased to host the twelfth biannual Swearing-In Ceremony at the Belo Mansion on Tuesday, November 18, 2014 for newly licensed attorneys who passed the July 2014 Texas bar exam. Over 110 attorneys were sworn in, many of whom were able to share the special event with friends and family.

DAYL would especially like to thank *Justice Douglas S. Lang* and **Justice Ada Brown** of the Fifth District Court of Appeals of Texas and **Judge Mary Murphy** of the First Administrative Judicial Region of Texas, who graciously gave of their time to speak at the event and swear-in the newly licensed attorneys. Justice Lang spoke on professionalism and the core values of our profession, Justice Brown spoke on the

things she wishes she would have known as a new lawyer and Judge Murphy spoke on balancing life and the challenges of our profession.

Many thanks to the DAYL Law Student Assistance Committee for planning this event. The members of DAYL look forward to another successful swearing in ceremony for February bar exam takers in the spring.

**Don't forget to renew your membership in 2015. Visit [dayl.com](http://dayl.com) and renew today! If you have moved or need to update your membership information, contact Cherie Harris ([cherieh@dayl.com](mailto:cherieh@dayl.com)).**

# Be a Rule Follower: Noncompliance with Rule 47 Could Prohibit a Party from Conducting Discovery

by Joshua M. Sandler and Rafael C. Rodriguez

**I**magine a scenario whereby you meet a prospective client over lunch and you learn from the client that her company is being sued for breach of contract. She tells you she wants to file a counterclaim for breach of fiduciary duty. So you give the client your best elevator speech on how knowledgeable you are on the law, sign her up, and proceed to draft and file a counterclaim along with some written discovery. The client expresses enthusiasm for your zeal and you are sitting pretty. Until, of course, the opposing party responds to your discovery requests and (not so subtly) indicates that you may not conduct discovery due to your failure to comply with Rule 47(c). The client, to whom you pitched yourself as very knowledgeable on the law, now has second thoughts.

## **Rule 47 prohibits a party seeking affirmative relief from conducting discovery until the party's pleading specifies the range of monetary relief sought**

A party who fails to comply with Rule 47(c) may not conduct discovery until the party's pleading is amended to comply. Rule 47(c) is easy to satisfy. It states that except in suits governed by the Texas Family Code, every party who sets forth a claim for relief in an original pleading—whether it is an original petition, counterclaim, cross-claim, or third-party claim—must specify the range of monetary relief sought.

And if a party does not comply with Rule 47(c), she may “not conduct discovery until the party's pleading is amended to comply.” Consequently, a party's failure to comply with Rule 47(c) can be a gift to the opposing side.

## **How failure to comply with Rule 47 can be beneficial to the opposing side**

Consider our example above. Assume the aforementioned counterclaim was

filed, that it did not comply with Rule 47(c), and that written discovery was served on opposing counsel the next day, which was just before the close of discovery.

In this instance, opposing counsel could timely serve you with his responses to your written discovery, but rather than provide a substantive response, he could object on the basis that Rule 47 precludes you from conducting discovery until you fully comply with the rule. He might also file special exceptions regarding your failure to comply with Rule 47(c).

In that case, even if you amended your counterclaim to comply with Rule 47(c), you still may be unable to conduct discovery without seeking leave of court because the discovery deadline has likely run.

## **The opposing party should also be wary of potential Rule 47 pitfalls**

If not handled diligently, Rule 47 could also bring about some predicaments for the opposing party. Consider a situation wherein an original petition that is noncompliant with Rule 47 is filed and you answer on behalf of the defendant. When plaintiff serves you with discovery, you timely respond by objecting on the basis of noncompliance with Rule 47(c). The next day, plaintiff amends his petition so that he is now compliant with Rule 47(c). So, now that the amended petition is filed in compliance with the rule, do you have 30 days from the date of the amendment to serve your responses (sans the Rule 47 objection) or must plaintiff serve you again with the discovery?

On September 4, 2014, the 13th Court of Appeals examined this issue and held that a party's time to respond to discovery requests begins to run as of the date the amended petition is filed in compliance with the rule. *In re Greater McAllen Star Properties, Inc.*, No. 13-14-00423-CV, 2014 WL 4401422, at \*6 (Tex. App.—

Corpus Christi Sept. 4, 2014, orig. proceeding). In other words, a defendant could potentially waive his objections if he fails to timely respond to the discovery after the plaintiff complies with Rule 47.

## **Avoid the pitfalls of Rule 47**

Rule 47 is easy enough to keep out of your hair. If you are a party with affirmative claims for relief, make sure your original pleading complies with the rule. And if you are defending against a party who is noncompliant with Rule 47(c), don't get too cute or you may end up waiving some important objections. Remember, if the shoe were on the other foot, how would you like opposing counsel to handle the situation?

*Joshua M. Sandler and Rafael C. Rodriguez are trial lawyers at Gruber Hurst Johansen Hail Shank LLP and practice in the areas of commercial litigation and employment law. They can be reached at [jsandler@ghjblaw.com](mailto:jsandler@ghjblaw.com) and [rrodriguez@ghjblaw.com](mailto:rrodriguez@ghjblaw.com).*

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involvement.**



*DAYL's Elder Law Committee (and family) visited the senior citizens of Treemont Nursing Home and Rehabilitation Center to play games with the residents.*



*DAYL's Lawyers Serving Children Committee volunteered with the Dallas Urban Debate Alliance in November.*



*DAYL's Solo / Small Firm Committee hosted a full house at the annual Mock Holiday Party at Times Ten Cellars*



*DAYL's November Generation Generosity Service Project provided DAYL members with an opportunity to work with Dallas Habitat for Humanity.*



*DAYL held a Past Presidents' Dinner recognizing leaders as far back as 1961.*