



June 2016

Vol. 33, No. 6

THE DICTA

The Docket

June 18 (Saturday)

DAYL Trial Skills Boot Camp
9:00 a.m., George Allen Courthouse

June 20 (Monday)

DAYL Small Business Symposium
9:00 a.m., Meadows Conference Center

June 20 (Monday)

DAYL Charity Ball Committee Meeting
6:30 p.m., McGuire, Craddock & Strother

June 21 (Tuesday)

DAYL Elder Law Committee Meeting
Noon, Belo Mansion

June 21 (Tuesday)

DAYL Politically Aware Committee Meeting
6:30 p.m., KoonsFuller

June 22 (Wednesday)

DAYL Freedom Run Committee Meeting
Noon, Belo Mansion

June 22 (Wednesday)

DAYL Pick Your Path Program
Noon, Belo Mansion

June 22 (Wednesday)

DAYL Equal Access to Justice Committee Meeting
Noon, Belo Mansion

June 23 (Thursday)

DAYL Deal Skills Committee Meeting
Noon, Belo Mansion

June 23 (Thursday)

DAYL Sailing Social and Gazebo Party
6:30 p.m., White Rock Corinthian Sailing Club

June 27 (Monday)

DAYL Solo & Small Firm Committee Meeting
Noon, Belo Mansion

June 27 (Monday)

DAYL Paint Nite
7:00 p.m., Blue Mesa

June 28 (Tuesday)

Moms in Law Special Interest Group Meeting
Noon, Belo Mansion

June 28 (Tuesday)

DAYL Lawyers Promoting Diversity Committee Meeting
Noon, Belo Mansion

June 29 (Wednesday)

DAYL Foot in the Door Program
Noon, Belo Mansion

June 30 (Thursday)

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

DAYL ONE TO WATCH

Marisa Jeffrey has been selected as the June 2016 DAYL One to Watch! To find out why, visit www.dayl.com.

DAYL Sailing Social and Gazebo Party

On Thursday, June 23, 2016, DAYL members have the unique opportunity to attend a Social at the **White Rock Corinthian Sailing Club**. From 6:30 – 8:30 p.m., **Adams & Martin Group**, **Anderson Jones** and **Staley Shiller** with **New York Life**, and **Esquire Solutions** will sponsor us for an evening at White Rock Lake. The **Hamburger Man** will make an appearance to cook some great

food, and beverages will be provided. A few sailing boats will also be available to those who wish to take a short cruise around the lake.

The White Rock Corinthian Sailing Club is located just a short drive from downtown Dallas, at 441 E. Lawther Drive in east Dallas. The cost to attend is \$3.00 for DAYL members and \$10.00 for non-members. RSVP to **Cherie Harris** (cherieh@dayl.com).

Taking the Next Step in Your Career: Tips for Success from Private Practice, In-house, and Government Attorneys

Are you a junior attorney and looking to move up the ranks in your law firm? Or perhaps you are looking to make the transition from private practice to in-house or government; or maybe government to private practice?

The DAYL Business and Career Development Committee will have a panel discussion over lunch with attorneys who have had success in big firms, small firms, in-house, and government practice. The panel will discuss how to set yourself up for success in your field, or if you are

looking to transition, how to make a successful transition and the advantages and disadvantages of the different types of law practice.

The panelists will include **John Helms** with John Helms Law Firm, **Michelle Pelton** with FedEx, and **Bill Morrison** with Tenet Healthcare. Each of the panelists has a wide range of experience to bring to the discussion.

The panel discussion will last for one hour, starting at noon at the Belo Mansion on **June 22, 2016**. To RSVP, visit www.dayl.com/dayl-pick-your-path.

How to Get Your “Foot in the Door”

Following the success of its “Entrepreneur Lunch” with former attorneys, the DAYL Assisting Lawyers In Transition (ALIT) Committee will hold a lunch panel on how to get your “Foot in the Door” at the Belo Mansion at noon on **Wednesday, June 29, 2016**.

The panel will consist of **Chris Rogers** (Hiring Partner at Haynes and Boone), **Haley Clark** (Owner of HC Legal Search), and **Aaron Tobin** (Partner at Anderson Tobin) who will each

provide insight on the types of talent firms are seeking, how to develop those talents, and how to best showcase them at an interview. Members seeking their first jobs, lateral moves, or new practice areas will not want to miss this opportunity to learn from experienced hiring professionals about how to effectively present as an attractive job candidate.

This program is open to DAYL members. Lunch is available for purchase at the Belo Mansion. To register, please visit <http://dayl.com/dayl-foot-in-the-door-discussion/>.

THE DICTA

Justin Gobert, Editor

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Copy Deadline for July Issue:

June 20, 2016

Justin R. Gobert

Email: justin.r.gobert@gmail.com

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From the President

Called to Serve

As lawyers, we are charged with assisting our clients with their legal needs. For most of us, clients are commercial businesses that can pay our fees. But as professionals, we are also called to give back and help those who can't afford our services. Not only is pro bono work good for the soul, it also provides young lawyers with opportunities to serve as lead counsel and explore legal issues outside of their daily practice. The DAYL has a strong legacy of serving the community, and this year is no exception.

As DAYL President, one of my special initiatives is focused on bringing together our sister bar organizations for a service project where we can have a significant and meaningful impact on the Dallas community. The project is targeted at minority and women-owned small businesses as anchors of our community, providing job opportunities as well as diverse goods and services responsive to local needs.

On June 20, DAYL and its sister bars will host the DAYL Small Business Symposium, a free, one-day conference featuring engaging seminars on legal issues crucial to a small business owner's bottom line. Young lawyers will speak on a variety of topics including protecting intellectual property, social media and privacy law, leasing office space, and litigation best practices. Attendees will also be given a booklet containing helpful summaries of the topics covered by the young lawyer participants in the seminars. Know a small business owner? Encourage them to register online at dayl.com/small-business-symposium.



Stephanie K. Gause

Another new DAYL service project in 2016 is Pro Bono Partners — a program formed with the Dallas Area Paralegal Association to connect volunteers with Dallas community nonprofits who provide legal aid to underprivileged Texans. Through a streamlined online process, young lawyer participants are assigned to a pro bono project that matches their skills and interests and are assisted by paralegals and mentors along the way. Since the program launched in February 2016, approximately 60 attorneys and paralegals have pledged to donate around \$300,000 worth of free legal services to its legal aid partners. Check out dayl.com/probonoproject/ to learn more and sign up!

Thank you to committee co-chairs **Amber Rogers, Bri Simpson, Jody Rodenberg,** and **Terry James,** and to DAYL's sister bar organizations, the Dallas Women Lawyers Association, Dallas Asian American Bar Association, J.L. Turner Legal Association, and the Dallas Hispanic Bar Association for their assistance and participation in the DAYL Small Business Symposium. Thank you also to **Tiffanie Limbrick** and **Bri Simpson** for their hard work in helping to get Pro Bono Partners up and running.

Together we can do so much more for the Dallas community. Find out ways you can join us in serving others by getting involved with one of DAYL's Community Service Committees listed on dayl.com/get-involved/committees/ today!

Stephanie Gause is a Partner at Frost Brown Todd practicing in Real Estate.

DAYL / DWLA Women's Mentoring Circles

DAYL and the Dallas Women Lawyers Association (DWLA) are almost halfway through their inaugural year of Mentoring Circles. With over 190 mentors and mentees, the Mentoring Circles gather once a month to address key issues impacting women in our profession. In April, the Circles gathered together at Times Ten Cellars for "Wine and Unwind: The Art of Networking for

Women Lawyers." **Jennifer Morris**, in-house counsel for AT&T, Inc., kicked off the event with her top tips for networking. Jennifer had the audience roaring with her advice including specific how-to's for gracefully *exiting* a conversation at a networking event! A special thanks to **Caviar Dallas**, **Grant Thornton**, **DTI Court Reporting Services**, and **Pinky's Valet** for providing a fun-filled evening for all!

The Mentoring Circles are gearing up for their next quarterly event on June 23—breakfast with author Linda Hirshman of *Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World*. This event is sponsored by **Grant Thornton**, **Randall Greer PLLC**, and **Bridge Legal Group**. If you want to get involved, be on the lookout this fall for applications for next year's program!

DAYL Paint Nite: Benefitting Communities in Schools' Ketchup Saturday Program



Join us for DAYL Paint Nite as we paint *Starry Starry Night*, Dallas style -- all for a great cause!

Who: Open to all

When: June 27, 2016 at 7:00 p.m.

Where: Blue Mesa, 7700 W. Northwest Hwy.

How: Register at <https://paintnite.com/events/1079845.html>

Cost: \$45 (\$15 goes towards Communities in Schools)

Space is limited, so sign up soon!

PRESENTED BY THE DALLAS ASSOCIATION OF YOUNG LAWYERS AND HONORARY CHAIRS DENA DENOYER STROH AND JEFF STROH

SAVE THE DATE

BENEFITING THE DAYL FOUNDATION



SAT., NOV. 12, 2016 @ 7:00 PM

3015 AT TRINITY GROVES

FOOD | DRINKS | DANCING | SILENT AUCTION | BLACK TIE

FOR QUESTIONS GO TO daylcharityball.com OR CONTACT daylcharityball@gmail.com

2015 DAYL Leadership Class's Bridge Bash was a Success!

The DAYL 2015 Leadership Class proudly presented the Dallas Bridge Bash on Saturday, April 16, 2016 at the Continental Avenue Bridge. With the iconic Margaret Hunt Hill Bridge and the award-winning Dallas skyline as its backdrop, the Dallas Bridge Bash was a celebration of food, drink, music, dancing, and local artists. More than just a fun evening, the Dallas Bridge Bash set out to help bridge the gap that exists in childhood education in our community. This was done by raising funds for and awareness about the Communities in Schools' Ketchup Saturday Program.

The Ketchup Saturday Program identifies third-graders who have fallen behind their peers in reading, math, and/or science and provides

them with focused tutoring plus transportation, meals, and mentorship to catch-up those stu-

dents in the subjects they are at risk of failing. Further, CIS tutors the parents in those subjects and teaches them how to extend support at home. The Ketchup Saturday Program has made a dramatic impact on the performance of the participat-

ing students.

The 2015 Leadership Class is pleased to announce that the Dallas Bridge Bash has raised over \$50,000 for the Ketchup Saturday Program, which will cover the expenses of the program for a year. This accomplishment would not have been possible without the hard work of the Leadership Class and the generosity of our attendees and in-kind and financial sponsors. Please visit <http://www.dallasbridgebash.com> to see a full list of our sponsors.

The 2015 Leadership Class would like to thank our facilitators and the DAYL Executive Committee and Board of Directors. A special thank you to DAYL President **Stephanie Gause** and DAYL Executive Director **Cherie Harris** for their unwavering support and encouragement.





SMALL BUSINESS SYMPOSIUM

ORGANIZED BY

the Dallas Association of Young Lawyers

Monday,
June 20, 2016

Meadows Conference Center

8:00 a.m. - Registration
8:30 a.m. - Opening Remarks
9:00 a.m. - Sessions Begin

2900 Live Oak Street
Dallas, Texas 75201
Free Parking

This free program is presented by



Free Legal Symposium

Innovative conference designed specifically for the needs of minority and women business owners.

Topics Vital to Your Success

Topics include employment law, privacy law, acquiring capital, debt collection, and taxes. Select topics based on your needs and interests.

Space is Limited

Don't miss this great opportunity to hear from experienced lawyers in the field. Register now before it is sold out.

Breakfast and lunch are provided free of charge and attendees will receive an informative resource handbook to take home with them.

The DAYL Small Business Symposium is funded, in part, by a grant from the Texas Young Lawyers Association.

Register Now for the DAYL Small Business Symposium

www.dayl.com/small-business-symposium



FEATURING WINES FROM FRANCE

JUNE 30, 2016 • 6:00 - 8:00 PM

SAMMONS CENTER FOR THE ARTS

3630 HARRY HINES BLVD • DALLAS, TEXAS 75219

COMPLIMENTARY VALET WILL BE PROVIDED

DAYL IS PLEASED TO ANNOUNCE THAT SETH REICH IS THIS YEAR'S RECIPIENT OF THE DAYL PRO BONO SERVICE AWARD, WHICH WILL BE PRESENTED AT THE EVENT.

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\$30 IN ADVANCE; \$25 FOR GOVERNMENT LAWYERS, INTERNS & LAW STUDENTS; ADD \$10 AT THE DOOR

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CHERIE HARRIS | 2101 ROSS AVENUE, DALLAS TEXAS 75201. PAYMENT CAN BE MADE ONLINE AT

[HTTP://WWW.DAYLWINETASTING.EVENTBRITE.COM](http://www.daylwinetasting.eventbrite.com)

QUESTIONS? CONTACT CHERIE HARRIS AT 214.220.7420 OR CHERIEH@DAYL.COM.

The Malice Requirement for Obtaining Punitive Damages for Fraud

by Angela M. Buchanan

“Punitive damages are generally available for common law torts so long as the traditional prerequisites are met: a finding of actual damages, and outrageous, malicious, or otherwise reprehensible conduct.” *Safeshred v. Martinez*, 365 S.W.3d 655, 660 (Tex. 2012). Fraud is one category of reprehensible conduct that supports an award of punitive damages. Tex. Civ. Prac. & Rem. Code § 41.003. However, when fraud is the underlying tort that the plaintiff relies on for its compensatory claim, the fraud claim alone will not support an award of punitive damages.

In civil litigation, plaintiffs often assert a claim of negligence and gross negligence. This set up has a tort and an aggravating circumstance, and a jury's affirmative finding on both grounds supports an award of punitive damages. Contrarily, sometimes plaintiffs will assert a simple fraud claim and intend to capture a punitive damages award on a jury's affirmative finding of fraud alone. This is impermissible. *Safeshred*, 365 S.W.3d at 661.

In Texas, plaintiffs must show more than mere fraud to obtain punitive damages. Essentially, a plaintiff cannot obtain punitive damages for her fraud claim based solely on the same fraudulent conduct that supported the compensatory award. *Id.* To obtain punitive damages, a plaintiff must prove, by clear and convincing evidence, that the defendant committed fraud, and the fraud was committed with actual malice. *Burleson State Bank v. Plunkett*, 27 S.W.3d 605, 618 (Tex. App.—Waco 2000, pet. denied). For a fraud claim, a “corporation may be liable for exemplary damages if it acts maliciously through the actions of a corporate officer.” *Id.*, at 619.

Texas Civil Practice & Remedies Code § 41.003 authorizes an award of exemplary damages for common law fraud, only when there is proof an aggravating circumstance that justifies exemplary dam-

ages. *See Plunkett*, 27 S.W.3d 618-619. This standard, which requires the presence of a tort accompanied by an aggravating circumstance, has long been the basis for punitive damages in Texas. Despite this, many parties overlook the need for an aggravating circumstance when a willful tort, such as fraud, provides the basis for the underlying compensatory claim.

Aggravating circumstance means that, in addition to engaging in wrongful behavior (e.g. - fraud), the defendant also had an unlawful motive, desiring to harm the plaintiff. Accordingly, a finding that a defendant intentionally defrauded a plaintiff is insufficient to support a punitive damages award for fraud, when the fraud was also the underlying compensatory claim. This is because “when a tort requires willful harm as a necessary element of liability, that willfulness alone cannot also justify a punitive damages award.” *Safeshred*, 365 S.W.3d at 662.

In 1966, in *Dennis v. Dial Finance & Thrift Co.*, the Texas Supreme Court explained that exemplary damages are available for fraud “intentionally committed for the purpose of injuring [the plaintiff].” 401 S.W.2d 803, 805 (Tex. 1966). That is also the definition of malice in Texas Civil Practice & Remedies Code Chapter 41. According to §41.007(7), “Malice means a specific intent by the defendant to cause substantial injury or harm to the claimant.” Tex. Civ. Prac. & Rem. Code §41.007(7). The specific intent to prove actual malice

means that the defendant desires to cause the consequences of her act, or that she believes the consequences are substantially certain to result from it. *Seber v. Union Pac. R. Co.*, 350 S.W.3d 640, 654 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (citing *Reed Tool Co. v. Copelin*, 689 S.W.2d 404, 406 (Tex. 1985)).

In the 2012 *Safeshred v. Martinez* case, the Texas Supreme Court reiterated that an aggravating circumstance must be something separate from, and in addition to, the underlying wrongful act. *Safeshred*, 365 S.W.3d 655 (Tex. 2012). When the wrongful conduct is fraud, the same fraud cannot be an aggravating circumstance. Fraud can be an aggravating factor for other wrongful conduct, such as trespass or breach of fiduciary duties. But if the underlying wrongful act is itself fraud, then fraud cannot be an aggravating circumstance.

Punitive damages are only appropriate in the most egregious cases. *Id.*, at 662. Thus, to recover punitive damages on a fraud claim, a Texas plaintiff must prove that a defendant's fraud was committed with malice. Requiring malice is consistent with the common law that §41.003 embodies, and it is consistent with only permitting punitive damages in extreme cases of bad conduct.

Angela M. Buchanan is a Senior Associate at the Rodriguez Law Firm and can be reached at abuchanan@therodriguezfirm.com.



Saturday, September 24, 2016
8:00 a.m. | Trinity Groves
www.freedomrun.com



Judge Eric Moyé hosted a DAYL Coffee with the Court Program in May 2016.



DAYL's Young In-House Counsel Committee recently held a CLE on important issues in employment law.

(Below) DAYL / DWLA Women's Mentoring Circles Networking Reception at Times Ten Cellars.

