



November 2016

Vol. 33, No. 11

THE DICTA

The Docket

November 30 (Wednesday)
DAYL Lawyers on Loan Application Deadline
5:00 p.m.

December 6 (Tuesday)
DAYL CLE – Texas Legislative Preview
Noon, Belo Mansion

December 7 (Wednesday)
DAYL CLE – How to Pick a Jury
Noon, Belo Mansion

December 14 (Wednesday)
DAYL / DWLA Women's Mentoring Circles
Application Deadline
5:00 p.m.

December 15 (Thursday)
DAYL Foundation Fellows Luncheon
11:30 a.m., Belo Mansion

DAYL ONE TO WATCH

Wesley Nute has been selected as the November 2016 DAYL One to Watch! To find out why, visit www.dayl.com.

Attention Law Students!

The DAYL Summer Judicial Intern Program seeks to match first- and second-year law students with an unpaid, six-week intern position with Dallas County Judges. The purpose of the program is to provide law students with invaluable behind-the-scenes experience working with the judiciary while providing those judges with research support.

Four \$500 stipends will be available to law students who demonstrate a financial need. Applications may be found at www.dayl.com/judicial-intern beginning December 1.

Contact **Cherie Harris** (cherieh@dayl.com) for more information.

2017 DAYL Board of Directors Announced

DAYL members recently elected the following people to the DAYL Board of Directors for 2017: **Nnamdi Anozie, Stefanie Bradshaw, Aubrey Boswell, Helen Hutton, Andy Jones, Whitney Keltch, Rex Mann, Barbara Pelaez, Paige Tackett, and Ashley Withers.**

Paul Simon will serve as DAYL President, **Jennifer Ryback** will serve as President-elect, **Charlie Gearing** will serve as Vice President, **Justin Gobert** will serve as Treasurer, and **Alex Bolton** will serve as Secretary. **Stephanie Gause** will serve as Immediate Past President.

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

their respective sister bar organization: **Janet Landry Smith** from DAABA; **Marisa Jeffrey** from DWLA; **Koi Lomas Spurlock** from J.L. Turner Legal Association; and **Nicole Munoz** from DHBA.

Jennifer Birdsall, Kelsey Marsh, and Caitlin Wilkinson will serve as a liaison between Texas A&M School of Law, UNT Dallas College of Law, and SMU Dedman School of Law, respectively, until May, 2017.

DAYL is poised and ready for a great year in 2017 and we look forward to having you be a part of it. If you'd like information on how to get more involved with DAYL, please contact the DAYL Executive Director, **Cherie Harris**, at cherieh@dayl.com.



Fellows Luncheon

Thursday, December 15, 2016
11:30 a.m. - 1:00 p.m.
Belo Mansion

Join the DAYL Foundation at its annual luncheon to recognize commitment to service.



The Honorable Barbara M.G. Lynn, Chief Judge of the Northern District of Texas, will be the keynote speaker. Judge Lynn is the first woman to be Chief Judge in the Northern District and is one of three patent pilot judges on her court.

At the Luncheon, the DAYL Foundation will recognize its Award of Excellence Recipient. The Award is given annually to a Fellow of the Foundation who has demonstrated a commitment to community service outside of the legal profession.

Tickets are \$35.00 per person or \$350.00 for a table of ten. Contact Cherie Harris (cherieh@dayl.com) for information about purchasing individual tickets or a table of 10. Payment and guest list should be submitted by Friday, December 9.

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Justin Gobert, Editor

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Cherie Harris
Executive Director

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Copy Deadline for December Issue:

December 1, 2016

Justin R. Gobert

Email: justin.r.gobert@gmail.com

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From the President

Attitude of Gratitude



Stephanie K. Gause



e've all heard that diet and exercise are good for us, but did you know that practicing gratitude can improve your health as well?

Multiple studies suggest that those who practice being grateful in their daily lives report fewer stress-related health issues. It's more than just giving thanks on Thanksgiving each November, it's focusing on a feeling of appreciation throughout the year. While giving thanks to those who have helped me and DAYL is not enough, please allow me to express my gratitude to at least a few who have helped make this year a success.

First, thank you, thank you to DAYL's Executive Director, **Cherie Harris**. Cherie's insight on matters great and small has been invaluable to me. Without her support, countless DAYL projects would literally have been impossible. What I especially admire about Cherie is her undying commitment to this organization and the true enjoyment she finds in connecting young lawyers with their passion projects. She inspires all of us to do our very best on the committees we serve and in our community.

To DAYL's Leaders, thank you for supporting our membership with your countless hours of service. While we do so much for the community and bar, it's important to remember this is a volunteer organization. We're all busy doing our best to succeed at our careers, but you manage to find time to make a real difference in the lives of young lawyers. Whether through community service or organizing a thought provoking seminar for young lawyers, you did more than most. By dedicating your time as Committee Co-Chairs, Board Members, or through the Leadership Class, and sometimes all of the above, you've continued a tradition of making DAYL the best young lawyer organization in Texas and the nation.

To the Dallas Judiciary, thank you for your sup-

port of DAYL's projects this year. Our members truly appreciate the opportunities for mentorship and guidance that the Dallas Judiciary is so willing to lend to its young lawyer community.

To our Sister Bars, thank you for sharing your outstanding leaders who served together with us on DAYL's Board of Directors. Thank you especially to the Sister Bar Presidents, **Emmanuel Obi, Rocio Garcia, Monika Sanford, and Angela Zambrano**. It's been a true pleasure to serve alongside you and I've learned a lot about leadership from each of you.

To the Dallas Bar Association, thank you for your leadership, guidance and support. Congratulations to **Jerry Alexander** for an outstanding year as DBA President! Your unwavering dedication to the DBA and the City of Dallas inspires me.

And last, but certainly not least, I would like to thank the many wonderful friends and family who have supported me behind the scenes this year. They've always been extremely supportive of my leadership efforts in DAYL and are always there to encourage me.

I am grateful for the leadership opportunities this organization has provided me. I have truly grown professionally and personally through my involvement in DAYL. Between balancing a new job, planning a wedding, trying to keep up with DAYL's 20 plus active committees and over 150 projects, and sorting through at least 100 DAYL-related emails each day, DAYL has really kept me on my toes this year and I'm better for it.

I encourage each of you to spend a little extra time this month expressing appreciation for the things you are thankful for and reap the health benefits that come with a gracious outlook on life.

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

BREAK JERRY'S BANK



DBA President Jerry Alexander will match, dollar for dollar, all donations from DAYL members, up to \$15,000, who donate to the Equal Access to Justice Campaign benefitting the Dallas Volunteer Attorney Program. To be considered, donations must be received by December 20, 2016. To donate, visit <https://app.mobilecause.com/form/F4sYvg>. Or, text JERRY to 71777 to receive a donation form via text. \$5, \$10, \$25, or more. No donation is too big or too small! Help us Break Jerry's Bank!

You are invited to participate in the Dallas County Civil District Courts' 4th Annual Blanket Drive for the Needy

The late Judge Phyllis Lister Brown began this initiative in 2013 when she took office as the Presiding Judge of the 162nd Judicial District Court. Let's continue the tradition to honor her memory and serve those in need this Holiday Season.

WHEN: NOVEMBER 21, 2016 – DECEMBER 2, 2016

WHAT: New or gently used blankets

WHERE: Blankets can be delivered to the 116th Judicial District Court,
600 Commerce Street, 6th Floor, Dallas, TX 75202

The blankets will be delivered to area shelters
on December 3, 2016.

Thank you,

Dallas County Civil District Judges



DAYL Lawyer on Loan Accepting Applications

After a very successful pilot program earlier this year, DAYL's Lawyer on Loan program is currently accepting applications for a program beginning in January, 2017. The Lawyer on Loan program helps young lawyers gain valuable courtroom and trial experience. Lawyers selected to participate in the Lawyer on Loan Program will be supervised by experienced city prosecutors and have the opportunity to try minor criminal offenses

to juries and to judges.

Selected participants will be responsible for reviewing case files set for trial, selecting a jury, giving opening statements, examining the witnesses, preparing jury charges, and making closing arguments and will work under the supervision of a city prosecutor.

One past participant described the program as a "great opportunity to practice trial procedures in the presence of actual jurors, judges, and opposing counsel."

The current program has positions available in Dallas, Carrollton, Plano, Rockwall, and Royse City.

Anyone interested in being selected for this program must complete an application and return it to **Cherie Harris** by **5:00 p.m., November 30, 2016**.

An application and more information, including time requirement for each city, can be found at www.dayl.com. Direct questions to **Cherie Harris** (cherieh@dayl.com).

An Overview of the 85th Texas Legislative Session

On **December 6, 2016** at noon, the DAYL Politically Aware Committee will host a bipartisan panel discussion that will provide an overview of the upcoming Texas legislative session. Distinguished local members of the Texas House of Representatives, **Rafael Anchia**

(D-Dallas) and **Jason Villalba** (R-Dallas), will provide an inside look at key issues facing the upcoming 85th Texas Legislature. The discussion will be facilitated by **Gromer Jeffers** of *The Dallas Morning News*, and will include exploring the legal and regulatory implications of potential legislative changes.

This program is free for DAYL members. Non-members may attend for \$10. Parking is available at the Belo, and lunch is available for purchase. This program has been approved for 1.00 hour CLE credit.

RVSP at <http://dayl.com/dayl-cle-texas-legislative-preview/>.



On October 1, DAYL continued a successful tradition of supporting the Alzheimer's Association's Walk to End Alzheimer's. The DAYL Elder Law Committee organized volunteer efforts that drew 36 DAYL members to run the registration table. The Walk had 4,600 registered participants, 711 teams, and over 10,000 total walkers, and has raised over \$950,000 so far. Donations for this year's Walk are being accepted until November 30, and you can donate to the DAYL team at www.alz.org/greaterdallas. Special thanks to Steven Hallbauer for his tireless effort to make DAYL's participation a success!

When Disability Strikes – Understanding Social Security Disability Insurance

by Joanna Green Brown

At some point, someone you represent or know will become disabled and unable to work due to a physical or mental health condition. It could be when a chronic condition becomes untreatable or after a sudden accident or illness. Disability catapults a person into a new world of timeframes and acronyms while being consumed by their health issue and dealing with a potential reduction of income. Having an attorney involved before the initial contact with the Social Security Administration allows for careful consideration of the facts, including maximizing the potential back-pay for your client.

Income maintenance programs are designed to bridge this income reduction. You would want to first consider if your client is eligible for employer based private disability insurance (Short Term and/or Long Term disability insurance) and Social Security Disability Insurance (SSDI or Title II; 42 U.S.C. §§ 401 et seq.; 20 C.F.R. Pt. 404). When a client presents with issues related to personal injury, workers' compensation, or bankruptcy an analysis of what, if any, income maintenance program your client may be eligible for is warranted. The same holds true when a person experiences a reduction in work hours or employment separation based on health issues.

SSDI is a public disability insurance where worker's payroll taxes fund the FICA-based annuity for Disability and Retirement. If a person has paid enough taxes quarterly (credits) into the annuity they may be eligible for a benefit in order to lessen the impact of the loss of earned income and become Medicare eligible based on disability. Once approved, SSDI eligibility carries with it Medicare eligibility after 24 months of entitlement, what some consider to be its main benefit.

To maintain eligibility, your client generally needs 40 credits, 20 of which need to be earned in the last 10 years ending with the year your client becomes disabled (the

20/40 rule). Special rules apply to younger workers who may not have been in the workforce long enough to earn 40 credits due to their status as minors. Clients would need to be counseled about the risks of potential gaps in quarters due to self-employment issues or how they receive income from their own business (i.e. non-FICA based income). Many may run the risk of potentially losing insurability due to the rolling basis of coverage calculation—including the significant others of high earners and stay-at-home parents who may not have FICA-based earnings.

Filing for benefits early is advised for almost all claimants since the entitlement to benefits starts at the later of either the 6th month following the onset of disability or 12 months before the filing date. The application for SSDI and the alleged onset date are pivotal. This means that the longer a person waits to apply, the longer they may go without access to benefits they may be entitled to and the benefit rate going forward may, ultimately, be reduced.

After determining insurability, the threshold question for determining disability is - whether the person currently has current gross earnings over \$1,130.00 per month (defined as substantial gainful employment; different standards apply for the blind). If they are not and the individual is unable to earn that amount as the result of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, they make it past the first hurdles and their application will be forwarded to a contracted State Agency associated with Texas Health and Human Services. That agency gathers medical records and makes a determination as to whether the medical requirements for disability are met.

If a person is denied benefits twice at the state level, they may request a hearing before an Administrative Law Judge. 42 U.S.C. § 423(d); 20 C.F.R. §§ 404.1505(a), 416.905(a). Appealing a denied SSDI claim

can take years to work its way through the administrative law system, then to federal district court, and back again to the administrative law system.

Like anything else where deadlines and filing requirements are important, keeping a calendar and a copy of everything submitted to anyone relating to the disability is necessary. Perhaps more importantly, a person needs to have a discussion with their treating physician or specialist about how their condition impacts their ability to work, and then listen to the provider's feedback; this may lead to continued employability or squelch issues that may arise down the line, related to successfully obtaining disability benefits.

Claimants can become accustomed to severe physical, psychological and psychosocial symptoms. What claimants view as normal may, in fact, be incredibly important in addressing the individual's level of functionality. Keeping a log of all medical treatment providers, treatments, and attempts to return to work can provide meaningful evidence for SSDI claims. The devil, as they say, is in the details. Credibility issues for the practitioner to be aware of include: treatment history, failure to follow medical advice, vocational history, age, and education. Everything a patient has told their doctor or a doctor has observed can make its way into medical records and may be used to invalidate even the most seemingly credible claims.

What attorneys who practice in this area see the most is a claimant's unnecessary delay in application and obtaining attorney representation. This can be based on the client being too optimistic about the chance of returning to work or denial. Most often it is based on a lack of knowledge of income maintenance programs. Social Security Disability benefits can take quite a bit of time to obtain. The take away is the earlier the application, the better.

Joanna Green Brown practices estate and disability planning which includes Social Security appeals and federal district court appeals. She can be reached at jgb@texasdisabilitycounsel.com



Congratulations to the DAYL 2016 Men's League Softball Champions - Norton Rose Fulbright



DAYL's annual Dinner with the Judiciary, held on September 24, 2016, featured a CLE program focusing on ethical issues that arise at trial.