



April 2017

Vol. 34, No. 4

THE DICTA

The Docket

April 10 (Monday)

DAYL Charity Ball Committee Meeting
6:30 p.m., Duffee + Eitzen

April 12 (Wednesday)

DAYL Solo & Small Firm Networking Happy Hour
6:00 p.m., People's Last Stand

April 13 (Thursday)

DAYL Pro Bono Partners Committee Meeting
Noon, Belo Mansion

April 17 (Monday)

DAYL Lawyers Against Domestic Violence Committee Meeting
Noon, Belo Mansion

April 18 (Tuesday)

DAYL Elder Law Committee Meeting
Noon, Belo Mansion

April 18 (Tuesday)

DAYL CLE - What Litigators and Transactional Attorneys Can Learn From Each other
Noon, Belo Mansion

April 18 (Tuesday)

DAYL Lawyers Promoting Diversity Committee Meeting
Noon, Belo Mansion

April 18 (Tuesday)

DAYL Aid to the Homeless Committee Meeting
6:00 p.m., Belo Mansion

April 18 (Tuesday)

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

April 19 (Wednesday)

DAYL Equal Access to Justice Committee Meeting
Noon, Belo Mansion

April 19 (Wednesday)

DAYL Beyond the Book Special Interest Group Meeting
7:00 p.m.

April 20 (Thursday)

DAYL CLE - Work-Life Balance as a Working Mom in Law
Noon, Belo Mansion

April 20 (Thursday)

DAYL Animal Welfare Committee Meeting
Noon, Belo Mansion

April 21 (Friday)

DAYL CLE - Using and Protecting Your Voice
Noon, Belo Mansion

DAYL ONE TO WATCH

Tiffany Talamantez has been selected as the April 2017 DAYL One to Watch! To find out why, visit www.dayl.com.

Fun Times Ahead at the Social House

Don't miss out on April's Social, which will be held on the patio at the **Social House** on **Thursday, April 27, 2017** from 6:00 – 8:00 p.m. Social House is located in Uptown at 2708 Routh Street and is a great place to socialize with fellow DAYL members.

Realtor, **Denise Larmeu** with **Ebby Halliday**, will be sponsoring the event. Not only has Denise worked with many lawyers in the Dallas area, but she

has also helped many DAYL members buy and sell their homes. Denise's high level of personal attention, customized service, and detailed work make her an ideal realtor for anyone looking to buy or sell their home. For more information about her business and experience, please click [here](#).

The cost to attend the Social is \$3.00 for DAYL members and \$5.00 for non-members. We look forward to seeing you there!

Join the DAYL Ask-A-Lawyer Committee and volunteer for DBA's Legalline on April 12, 2017. Volunteers are needed from 5:15 - 8:00 p.m. at the Belo Mansion. Food and drinks will be provided. This is a wonderful way to use your legal skills to give back to the community. RSVP to Stephanie Almeter (salmeter@mccathernlaw.com).

Is there Such a Thing as Work -Life Balance for a Working Mom in Law?

For working lawyer moms, is work-life balance real or is it a myth that defies reality? The DAYL Moms in Law Special Interest Group will examine this issue when they host a program on **Thursday, April 20** at noon at the Belo Mansion.

A panel of experienced moms in law at the top of their careers who seem to have it all figured out (or at least make it work) will share advice, funny anecdotes, and time management tips. The panelists will also provide advice for other lawyer

mothers to successfully practice law while maintaining legal and professional duties towards clients, the courts, and other lawyers.

Speakers include: **Judge Regina Moore**, Associate Judge of the 256th District Court; **Dena DeNooyer Stroh**, General Counsel at NTA; **Messina Madson**, former acting Dallas District Attorney; and **Mary Emma Karam**, partner at Jackson Walker.

This program is pending approval by the State Bar of Texas for 1.00 hour of CLE ethics credit. RSVP [here](#).

The Docket (continued)

April 24 (Monday)

DAYL Membership Committee Meeting
Noon, Belo Mansion

April 25 (Tuesday)

DAYL Get Involved Luncheon
Noon, Belo Mansion

April 27 (Thursday)

DAYL CLE Committee Meeting
Noon, Belo Mansion

April 27 (Thursday)

DAYL Social
6:00 p.m., Social House

April 28 (Friday)

DAYL Solo & Small Firm Committee Meeting
Noon, Belo Mansion

April 29 (Saturday)

DAYL Solo & Small Firm Summit
8:00 a.m., UNT Dallas College of Law

THE DICTA

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Copy Deadline for May Issue:

April 15, 2017

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From the President

You Are Amazing



Paul W. Simon

Too often in our profession, the focus on young lawyers is who they are not, what they don't know, the mistakes they make, or what they have yet to become. I have seen this burden more than one young lawyer. I am here to tell you that you are amazing right now.

For the simple fact you chose to become a lawyer, you are amazing. You are in an elite status. It is not easy to become a lawyer. The countless years of school, searching for and working at internships, an entire summer studying for a test that determines your career, and then ultimately that stressful little State Bar exam...all done to become part of this elite profession. As lawyers, we take a solemn oath to uphold the Constitution and the laws of the United States, which are the very fabric of our society. Every day we don't just go to work; we protect and defend our clients' legal rights because that is what we are called to do as lawyers. All that responsibility, however, does not come without more than its fair share of stresses and burdens. But remember, you are one of the small percentage of people who can call themselves a lawyer. That's pretty amazing!

Now you may say that's all well and good, but what about this criticism of young lawyers "not knowing anything" or "making mistakes." First, just remember that older, experienced lawyers make mistakes too. That's just a fact of life. So stop stressing about IF you will make a mistake; unfortunately, it will happen. Rather, continue to be amazing because you strive to further learn the law, minimize those mistakes,

and passionately represent your clients.

You are also amazing because you are young. You are the energy of the profession. While those long nights and billable hours are tiresome, you put in that effort all while you are still learning and expanding your knowledge and honing your skills. So the next time you are burning that midnight oil, just remember you're amazing because you're young and you can outwork your partners!

Last, but certainly not least, you are amazing because of your heart. You give of your time and talents so that the community in which we live is a better and richer place. Despite being a part of one of the busiest professions, you choose to volunteer. And I'm not talking about the stereotypical "window dressing" volunteer activity. You provide countless pro bono hours to those citizens who need their legal rights protected but cannot afford legal representation. You volunteer community service projects that improve the lives of our community's children, homeless, helpless animals, victims, veterans, and so many more. You organize fundraising events that support countless local non-profit organizations. In all that you do, you give back. For that, you are amazing!

So the next time you feel you are being criticized for being young or lacking knowledge or making a mistake, remember all the reasons that make you amazing!

Paul W. Simon is a Founding Partner at Simon Paschal PLLC practicing in Labor & Employment Law.

DAYL 2016 Leadership Class Presents: April Adventures!

The DAYL Leadership Class of 2016 is very excited to present DAYL April Adventures! April Adventures is a service-oriented competition designed to help Dallas young professionals connect and serve with organizations in various areas of need throughout the city that align with their passions and with which we hope volunteers will form long-lasting relationships. Four core volunteering sectors have been selected -- youth, education, social services, and health, but volunteers are encouraged to volunteer everywhere and anywhere during the month of April to earn points!

Register for the competition and volunteer either by yourself, with your friends,

or with your co-workers. Participants can form their own team or can join an existing team.

Time spent volunteering at April Adventures' approved events on Saturdays during April (April 1, April 8, April 22, and April 29) will earn the most points, but participating in 'bonus' volunteer events during April will rack up even more points. In the first week of May 2017, the Leadership Class will host a fun celebration to honor those who volunteered and recognize the highest-scoring teams and individuals who helped keep Dallas #StrongerTogether!

For more information about April Adventures, find us on Facebook, tweet us @DAYLAdventures, or email **Cherie Harris** (cherieh@dayl.com).



DAYL Foundation Accepting Grant Applications

The DAYL Foundation, a 501(c)(3) organization, is accepting grant applications for law-related projects and charitable organizations that meet one or more of the following criteria: 1) Law-related scholarship and education promoting knowledge and awareness of the rule of law; 2) Charitable and legal aid for the public, including improving the delivery of legal services to the indigent and im-

proving the administration of justice; 3) Foster honor, integrity and public confidence in the profession of law; 4) Assist the legal profession by enhancing the quality of client services and improving the self-regulation of the profession; and/or 5) Historical preservation and observances.

Grants typically range from \$500 - \$2,500. Organizations that have received DAYL Foundation grants in the past include: Judge Barefoot Sanders Law Mag-

net, CASA of Collin County, Unlocking DOORS, Genesis Women's Shelter, Girls Embracing Mothers, and MATA Montessori School, to list a few.

If you are aware of an organization that could benefit from a DAYL Foundation grant, please have them contact **Cherie Harris** (cherieh@dayl.com) for additional information. The grant application deadline for the DAYL Foundation is **May 22, 2017**.

Nominations are currently being accepted for the DAYL 2017 Pro Bono Service Award. The award will recognize the public service or legal aid performed by an individual young lawyer who in the previous year has provided outstanding contributions and access to justice to those in need of legal services.

The award will be presented at the DAYL annual Wine Tasting, held at the Sammons Center for Performing Arts on Thursday, June 22, 2017.

The award nomination deadline is May 8, 2017.

To receive a nomination form, contact Cherie Harris at cherieh@dayl.com or visit www.dayl.com.

DAYL Solo & Small Firm Summit

Join DAYL's Solo & Small Firm Committee on **Saturday, April 29, 2017** for a day of education, discussion, and network-building, specifically designed for solo and small firm attorneys.

Topics for this year's summit include

building your brand, the use of social media in marketing, billing, engagement letters, and much more.

The DAYL Solo & Small Firm Summit will be held at UNT Dallas College of Law, located at 1901 Main Street, Dallas, Texas 75201. Registration and

breakfast will begin at 8:00 a.m., with the first presentation starting at 9:00 a.m. The day-long program will conclude with a happy hour.

If you are interested in attending or if you have any questions, please contact **Cherie Harris** at cherieh@dayl.com.

Get Involved in DAYL!

New to DAYL or interested in learning how to get more involved? Join us on **Tuesday, April 25**, at noon, at the Belo Mansion and learn about DAYL's many committees and opportunities to expand your involvement.

Organized by the DAYL Membership committee, speakers include: **Paige Tackett, Justin Gobert, Jennifer Ryback, and Nicole Muñoz**.

During this informal program, you can learn more about what committee involvement entails and learn how you can become involved and the time commitment associated with committee involvement (HINT: it's not much).

RSVP [here!](#)

SAVE THE DATE DAYL TRIAL SKILLS BOOT CAMP

DAYL Trial Skills Boot Camp is back for the third year in a row and will be on **Saturday, June 10, 2017** from 8:30 a.m. - 1:30 p.m.

Learn how to give effective opening statements and winning closing arguments with some of Dallas's best trial lawyers: **Shonn Brown** (Lynn Pinker), **Carmen Mitchell** (Law Office of Carmen S. Mitchell, LLP), **Trey Cox** (Lynn Pinker), and **Trey Crawford** (Gruber Elrod). Then practice your skills in front of Dallas County District Judges and other experienced trial lawyers.

There is no charge for DAYL members to attend. Breakfast and a post-event awards brunch are included. Space is limited. Registration opens in mid-April. Questions? Contact **Cherie Harris** (cherieh@dayl.com).

The 2017 DAYL
Leadership Class
Application Deadline
is May 31, 2017.

We are celebrating 21
years of developing
young lawyers as
leaders through the
Leadership Class.

Contact Cherie Harris
(cherieh@dayl.com)
for an application or
to get additional
information.

DAYL Announces its Recent Award Recipients

Outstanding Mentor Award
Meyling Ly Ortiz
Toyota Motor North America Inc.

Outstanding Young Lawyer Award
Julie Pettit
The Pettit Law Firm

Liberty Bell Award
Sandra Teter
ST Search

The recipients will be recognized at the DBA Law Day Luncheon on May 5, 2017 at the Belo Mansion. For ticket information, visit www.dallasbar.com.

Golf for Good!

REGISTER NOW FOR THE
The 25th Annual
DBA PRO BONO GOLF TOURNAMENT

Benefitting the Dallas Volunteer Attorney Program!

Thursday, April 27
AT COWBOYS GOLF CLUB

Click here to register!

Join the DBA for their 25th Annual Pro Bono Golf Tournament Thursday, April 27 at Cowboys Golf Club. All levels of play are encouraged to sign up. It's a great for networking and young lawyers receive a discounted registration fee! Limited space is available. Register now.

State Bar of Texas IP Section to Award the 2017 Women and Minority Scholarships at the Annual Meeting

Each year, the Intellectual Property Law Section of the State Bar of Texas awards two \$5,000 scholarships to a woman and/or minority law student attending a Texas law school.

The purpose of this scholarship is to facilitate and encourage women and minorities to enter the practice of intellec-

tual property law in Texas, and to become active members of the State Bar IP Section, by assisting these students with their financial needs.

Selection criteria of the scholarships include: merit, scholastic performance, and financial need. Consideration is also given to extracurricular activities both inside and outside law school. Applications for the

Scholarship will be available for download from the IP Section's website, located at <http://texasbariplaw.org/Awards.aspx>.

All completed applications must be postmarked or time stamped by no later than May 1, 2017 to be considered. The scholarships will be awarded at the IP Section's luncheon during the 2017 State Bar of Texas Annual Meeting in Dallas.



SAVE THE DATE
SEPTEMBER 16, 2017

Potential Penalty for Late Filing Tax Return -- Even if Prepared by Professional

by Aubrey P. Boswell

If a taxpayer hires a tax professional to assist with filing a tax return and misses a filing deadline, can the taxpayer point the finger at the professional to avoid a late filing penalty? The answer to this question is not clear-cut.

Federal tax law provides the applicable due date for tax returns and extensions of filing deadlines. Under Section 6651(a)(1) of United States Code Title 26, a late penalty applies for failure to file a tax return by the due date, unless it is shown that such failure is due to *reasonable cause* and not due to willful neglect. Treasury Regulations add that reasonable cause will excuse a failure to file timely only if the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time. TREAS. REG. 301.6651-1(C)(1).

In a landmark case *United States v. Boyle*, the U.S. Supreme Court identified three categories of late filing cases where a professional tax advisor was involved. *United States v. Boyle*, 469 U.S. 241 (1985). In the first category, a taxpayer relies on an agent for the ministerial task of filing or paying. *Id.* at 249-50. In the second, in reliance on the advice of his or her accountant or attorney, the taxpayer files a return after the actual due date but within the time the adviser erroneously told him or her was available. *Id.* In the third, an accountant or attorney advises a taxpayer on a matter of tax law. *Id.* at 251.

The Court in *Boyle* held that the taxpayer has a "fixed and clear" duty to ensure that returns are timely filed and that that duty cannot be discharged by delegating responsibility to an attorney or accountant. *Id.* at 249. Therefore, if the facts fall into the first category of cases, the taxpayer will likely be held responsible for any late filing penalty. Because

the facts of the *Boyle* case fit into this category, the Court did not reach a decision as to whether cases falling into the second and third categories could find relief from late filing penalties. *Id.* at 251 n.9.

Boyle recognized that there is a split of authority as it relates to second category cases – ones in which a taxpayer files his or her tax return before what he or she was erroneously advised was the deadline. *Id.* The Third and Sixth Circuits have held that a taxpayer can establish reasonable cause in such cases. See *Estate of Thouron v. United States*, 752 F.3d 311, 314 (3rd Cir. 2014); *Sanderling, Inc. v. Commissioner*, 571 F.2d 174 (3rd Cir. 1978); and *Estate of Bradley v. Commissioner* 33 TCM 70 (1974), *aff'd* 511 F.2d 527 (6th Cir. 1975). However, the Seventh and Eighth Circuits have found that reliance on the erroneous advice of an accountant or attorney as to the due date of a return does not rise to the level of reasonable cause. See *Ballard v. Commissioner*, 854 F.2d 185 (7th Cir. 1988); *Estate of Kerber v. United States*, 717 F.2d 454 (8th Cir. 1983); and *Smith v. United States*, 702 F.2d 741 (8th Cir. 1983). So far, the Fifth Circuit has decided to leave this question open so as not to further the conflict among the Circuit Courts. See *Denenburg v. United States*, 920 F.2d 301 (5th Cir. 1991).

The third category of cases – those involving reliance on the erroneous advice of an accountant or attorney as to a matter of law – provides even more potential for obtaining an abatement of penalties for late filing a tax return. The Supreme Court in *Boyle* noted that, "[c]ourts have frequently held that 'reasonable cause' is established when a taxpayer shows that he reasonably relied on the advice of an accountant or attorney that it was unnecessary to file a return, even when such advice turned out to have been mistaken." *Boyle* at 250.

A case decided by the Tax Court in 1986 is perhaps the most illuminating for what cases might fit into the third category. *Estate of Paxton v. Commissioner*, 86 T.C. 785 (1986). In *The Estate of Paxton v. Commissioner*, the Tax Court addressed a case in which the taxpayer relied on the advice of his attorney that it was not necessary to file an estate tax return. *Id.* at 800-01. The attorney's advice was later revealed as wrong. *Id.* In that case, the attorney for the decedent's family advised the personal representative for the estate that the assets of the estate were well below the estate tax exemption and that an estate tax return did not need to be filed. *Id.* The personal representative then heeded the advice and did not file a return. *Id.* The *Paxton* Court found that when an accountant or attorney advises a taxpayer on a matter of tax law, such as whether a liability exists, it is reasonable for the taxpayer to rely on that advice. *Id.* at 820. The Court held that the taxpayer was not liable for late filing penalties and interest because the personal representative had reasonably relied on the family attorney's advice. *Id.*

The above cases demonstrate that filing a tax return late, even when prepared by a professional, can lead to penalties for late filing. Under certain circumstances, those penalties may be abated if the taxpayer relied on the advice of the professional, but any such abatement will be heavily dependent on the nature of the advice. As a general rule, taxpayers should pay close attention to filing deadlines and regularly follow up with their tax professional to ensure those deadlines are met.

Aubrey P. Boswell is an associate at Winstead P.C., where he practices wealth preservation. He can be reached at aboswell@winstead.com or (214) 745-5670.



On March 30, DAYL's Judiciary Committee organized Coffee with the Appellate Court, which provided DAYL members with an opportunity to meet the Justices of the 5th District Court of Appeals in Dallas. A very special thank you to all of the participating judges and Justice Stoddart, in particular, and Aaron Burke with the DAYL Judiciary Committee, for helping organize such a fantastic program.



Through the DAYL Wellness Committee, DAYL members participated in a free yoga event on March 22. Matt Sanderson, a DAYL member and owner of Yogis on the Go, provided excellent techniques for those who want to relax their mind and body through yoga. Thank you Matt and Hansary Laforest with the DAYL Wellness Committee for bringing this opportunity to DAYL members.