



August 2017

Vol. 34, No. 8

# THE DICTA

## The Docket

August 4 (Friday)  
DAYL Freedom Run Early Bird Registration Deadline

August 7 (Monday)  
DAYL Social Committee Meeting  
6:00 p.m., Social House

August 7 (Monday)  
DAYL Charity Ball Committee Meeting  
6:30 p.m., Duffee + Eitzen

August 9 (Wednesday)  
DAYL Solo & Small Firm Committee Networking  
Happy Hour  
6:00 p.m., People's Last Stand

August 9 (Wednesday)  
DAYL Freedom Run Committee Meeting  
6:30 p.m.

August 10 (Thursday)  
DAYL Pro Bono Partners Committee Meeting  
Noon, Belo Mansion

August 12 (Saturday)  
DAYL Ask-A-Lawyer Committee Volunteer Event  
1:00 p.m., Lakewood Library

August 15 (Tuesday)  
DAYL Moms in Law Program  
Noon, Belo Mansion

August 15 (Tuesday)  
DAYL Aid to the Homeless Committee Meeting  
6:00 p.m., Belo Mansion

August 15 (Tuesday)  
DAYL Elder Law Committee Happy Hour  
6:30 p.m., The Theodore

August 15 (Tuesday)  
DAYL Politically Aware Committee Meeting  
6:30 p.m., KoonsFuller

August 16 (Wednesday)  
DAYL Freedom Run Committee Meeting  
6:30 p.m.

August 16 (Wednesday)  
DAYL Beyond the Book Club Meeting  
7:00 p.m.

August 17 (Thursday)  
DAYL Animal Welfare Committee Meeting  
Noon, Belo Mansion

August 18 (Friday)  
DAYL Lawyers Against Domestic Violence Committee Meeting  
Noon, Belo Mansion

August 21 (Monday)  
DAYL Charity Ball Committee Meeting  
6:30 p.m., Duffee + Eitzen

August 22 (Tuesday)  
DAYL Lawyers Promoting Diversity Committee Meeting  
Noon, Belo Mansion

## School Supply Drive at the August Social!

**J**oin DAYL on **Thursday, August 24** from 6:00 – 8:00 p.m. for our August Social sponsored by and held at **PayneMitchell Law Group**. Drinks and appetizers will be provided.

In lieu of an entry fee, we will be **collecting donations for Mosaic Family Services**, a non-profit organization offering a safe haven for survivors of human rights abuses, including human trafficking and domestic violence. Many of these survivors are young chil-

dren. Let's help them start the school year off on the right foot! We will be accepting cash donations (for school uniforms and other needs) as well as backpacks and school supplies.

PayneMitchell is located at Parkside Tower, 3500 Maple Avenue, Suite 1250, which is on the 12th floor of the Heritage Auctions building across the street from Reverchon Park. Parking is free and can be accessed at the Visitor/Tenant Parking entrance on Maple Avenue.

## Tips from the Bench: How to Effectively Network with the Judiciary

**E**ver wonder whether it's appropriate to communicate with judges through social media or whether you can network with judges when you have a case in their court? On **Wednesday, August 23** at noon at the Belo Mansion, DAYL will delve into a CLE discussion regarding how to effectively and appropriately interact with the judiciary outside of the courtroom.

Networking with the judiciary can prove intimidating for many young lawyers. This CLE will provide insight on various issues related to this topic, including social media interac-

tions with the Court, how to approach networking with judges at political and/or social events, how the relationship can change when your former co-worker/mentor/friend is now on the bench, and how to avoid any unwanted ethical implications.

The CLE will be presented by the **Honorable Martin Hoffman** of the 68th District Court, the **Honorable Amber Givens-Davis** of the 282nd District Court, and **Julie Pettit** of the Pettit Law Firm. It is free for DAYL members. Non-members may attend for \$10.

RSVP to [Cherie Harris](#).

## The Docket (continued)

August 23 (Wednesday)  
DAYL Lunch and Learn CLE  
Noon, Belo Mansion

August 24 (Thursday)  
DAYL Social  
6:00 p.m., PayneMitchell Law Group

August 25 (Friday)  
DAYL Solo & Small Firm Committee Meeting  
Noon, Belo Mansion

August 26 (Monday)  
DAYL Membership Committee Meeting  
Noon, Belo Mansion

August 31 (Thursday)  
DAYL Coffee with the Court  
8:00 a.m., Ellen's Southern Kitchen

September 16 (Saturday)  
The Freedom Run  
8:00 a.m., Trinity Groves

# THE DICTA

Alex Bolton, Editor

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2101 Ross Avenue  
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214-220-7420 | 214-220-7422 fax  
www.dayl.com  
Cherie Harris  
Executive Director

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Copy Deadline for September Issue:

**August 15, 2017**

**Alex Bolton**

Email: [abolton@duffee-eitzen.com](mailto:abolton@duffee-eitzen.com)

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## From the President

# You Are Not Alone



Paul W. Simon

I don't know about you, but lately I have felt overworked, stressed, and just plain tired. The demands of the practice, along with obligations at home and the various organizations and non-profits I serve can become simply overwhelming. The work never stops, even when you try and hit the pause button.

The mental health statistics among lawyers is staggering. High stress among law students is 96% compared to 70% in med students and 43% in graduate students. Only half of lawyers identify as "at least satisfied" with their work. These stresses and the unhappiness have led to lawyers becoming the most frequently depressed occupation in the United States.

I don't share these statistics to tarnish a profession that I love or to dissuade students from attending law school and pursuing a career in the law. The reason I share these statistics is for those of you who are overworked, stressed, tired, and depressed. These symptoms can lead us to drink, abuse prescription medication or consume illicit and illegal drugs so that we can disconnect from reality. Other symptoms can include changes in mood or withdrawing from friends.

If you are struggling right now and experiencing some of the stresses I've described, I want you to know you are not alone. Your friends, your colleagues, and your bosses likely all have experienced similar struggles or currently are going through those same struggles with you. If there is one thing I can emphasize, it is that you are not the only one struggling and despite the appearances of others, stress can weigh us all down. I encourage you to talk to your friends and share your struggles. That can be easier said than done, though. If you

don't feel as if you can open up to your friends or family, I urge you to at least check out the **Texas Lawyers' Assistance Program ("TLAP")**. TLAP is made up of lawyers, many of whom have battled depression, anxiety, and addiction. These are lawyers who want to help you and me. Even if you don't feel as if you are to a point that you need TLAP, I encourage you to click this link and view the videos of lawyers talking about their struggles. <https://www.texasbar.com/Content/NavigationMenu/ForLawyers/TexasLawyersAssistanceProgram/TLAP.htm>. You are not alone.

If you are considering suicide, please call 911 for immediate help or 1-800-273-TALK (8255) to speak with the National Suicide Prevention Hotline. Through the Crisis Text Line, you can contact a crisis counselor by texting "go" to 741-741.

If you are concerned that someone you know may take his or her life, please call 911 or contact the National Suicide Prevention Hotline. If you would like general information about suicide prevention, call the Texas Lawyers' Assistance Program at 1-800-343-8527.

Thank you to the **State Bar of Texas** for providing the statistics and resources referenced in this article.

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

## DAYL ONE TO WATCH

Anna Rupani has been selected as the August 2017 DAYL One to Watch! To find out why, visit [www.dayl.com](http://www.dayl.com).

**DALLAS ASSOCIATION OF YOUNG LAWYERS PRESENTS**

**FREEDOM RUN**

**SATURDAY SEPTEMBER 16, 2017**  
 8:00 AM FUN RUN  
 8:30 AM 5K

**RON KIRK PEDESTRIAN BRIDGE AT TRINITY GROVES**

**EARLY BIRD THROUGH AUG 4TH \$25 UNTIMED | \$30 TIMED**

**INTERESTED IN SPONSORING? EMAIL [CHERIEH@DAYL.COM](mailto:CHERIEH@DAYL.COM)**

**BENEFITING THE Assist the Officer FOUNDATION**

## Training for Freedom Run: DAYL Couch to 5K

**T**he DAYL Freedom Run will be held on **September 16, 2017**. If you have contemplated signing up for it, but haven't ever actually run a 5K before or if you're concerned that you might not be in shape or have the endurance for it, then you may want to participate in the

DAYL Couch to 5K training program that begins in August and that will culminate with the Freedom Run.

The DAYL Wellness Committee is kickstarting a six-week Couch to 5K running program designed to get beginner runners prepped to run a 5K. The program is comprised of 30 minute practice

runs for three days a week. These practice runs begin with a mix of running and walking. As the weeks progress, runners will gradually build up strength and stamina to run a 5K.

If you're interested, email **Hansary Laforest** ([hansarylaforest@gmail.com](mailto:hansarylaforest@gmail.com)) and then sign up for the [Freedom Run!](#)

## Moms in Law Events and Expansion

**B**eing a working mom can be challenging. Being a working lawyer mom can be a different ballgame with its own unique challenges. Since its inception in March 2016, DAYL's Moms in Law has become exactly what it intended to be – a no pressure, no commitment, informal, fun support group for lawyer moms. It's been so successful that Moms in Law has decided to join forces with the DBA to expand the group.

The DAYL and DBA will host their first joint Moms in Law lunch at the Belo Mansion on **Friday, September 15, 2017**, at noon. There will be quarterly lunches at the Belo Mansion. During all other months, there will be two lunches offered in either Dallas or North Dallas. The lunches around town will be divided based on children's ages, but moms or moms-to-be are wel-

come to attend whichever one best fits their schedule. RSVP to **Christine Leatherberry** ([christine@connatserfamilylaw.com](mailto:christine@connatserfamilylaw.com)) if you would like to attend the first joint lunch or join the Moms in Law email list.

After a successful Moms in Law CLE on work-life balance this past spring, DAYL, Moms in Law, DWLA and DAYL/DWLA Mentoring Circles have joined forces for a new speaking engagement. **Mary Emma Karam** will speak about client development on **Tuesday August 15, 2017**, at noon at the Belo Mansion. Ms. Karam is the partner in charge of Business Development and Marketing for Jackson Walker and was the first female associate promoted to partner. She was profiled by Law360 as part of its Rainmaker Q&A Series about what skills are necessary to become a rainmaker, attract clients, and maintain a status as a rainmaker. Ms. Karam will

speak about "*How to Seek and Serve Your Clients - Business Development Tips With an Emphasis on Women Attorneys*" (CLE credit pending state bar approval). RSVP at <http://www.dayl.com/business-development-tips-for-women-attorneys/>.

**DAYL Coffee with the Court  
Thursday, August 31  
8:00 a.m.**

**Ten Specific Ideas for Making You a Better Litigator  
Presented by The Honorable Ken Tapscott, County Court at Law Number 2.**

**RSVP to Cherie Harris  
([cherieh@dayl.com](mailto:cherieh@dayl.com)).**

## Wine Tasting Raises \$17,000 for DVAP

**O**n Thursday, June 22, DAYL held its annual Wine Tasting at the Sammons Center for the Arts in Dallas. The Wine Tasting was an opportunity to raise money for the **Dallas Volunteer Attorney program**. The theme for the evening was Argentina and we featured great Argentinean wines, tango dancers from **Tango Amor** and fabulous musical entertainment compliments of Ed Rojas with **Rojas School of Music** ([www.rojasschoolofmusic.com](http://www.rojasschoolofmusic.com)).

At the Wine Tasting, DAYL had the opportunity to recognize its 2017 Young Lawyer Pro Bono Award Recipient, **Yu-cheng “Jack” Fan** for his dedication to pro bono service over the past year. In 2016, Jack accepted forty-five (45) cases from DVAP that ran the gamut from estate planning & probate, family law cases involving domestic violence, and expunctions. In addition, the DAYL Pro Bono Partners Committee was present to recognize individuals who signed

up for and completed a pledge to accept pro bono cases. Those people included **Adrian Bower, Joanna Green Brown, David Diamond, Brandon Fuqua, Tiffanie Limbrick, Amber Schrandt, Ellen Williamson, Christine Williford, and Angela Wilson**. To learn more about Pro Bono Partners, visit [www.dayl.com/probonopartners](http://www.dayl.com/probonopartners).

DAYL thanks the co-chairs of the Equal Access to Justice Committee, **Megan LaDriere** (Baker Botts), **Tiffany Talamantez** (Sorrels Udashen & Anton), **Jenna Carl Jabara** (Catholic Charities), **Jayla Wilkerson** (Dallas D.A.’s Office), and **Chris Bankler** (Jackson Walker), for organizing and planning the event.

On July 20, DAYL presented a check to the DBA Board that represented proceeds from the Wine Tasting, totaling \$17,010.50. The money will be donated to the Dallas Volunteer Attorney Program so they can continue their great work helping people

with legal issues who cannot afford to hire an attorney. The event would not have been possible without the generous financial sponsorship of many firms and companies.

The top tier sponsors, Vineyard sponsors, were **Jackson Walker, Winston & Strawn LLP, Bloomberg Law, and Baker Botts LLP**. The Champagne level sponsors were **McGuire, Craddock & Strother, P.C., Thompson Coe, Thompson & Knight Foundation, Barnes & Roberts, and Robert Half Legal**. Cabernet sponsors were **Consilio, Deans & Lyons LLP, Frost Brown Todd, Haynes and Boone, LLP, Hill Mediations, Kastl Law, P.C., Kim Tindall & Associates, LLC, KoonsFuller, Locke Lord LLP, Mimi Coffey Firm, Munsch Hardt Kopf & Harr, P.C., Simon | Paschal PLLC, Sorrels, Udashen & Anton, The Davis Law Group, PC, Veritext, and Vinson & Elkins, LLP**. We truly appreciate their support of DAYL and DVAP.



## VOLUNTEERS NEEDED

DAYL's Ask-A-Lawyer Committee is seeking volunteers to answer general legal questions on Saturday, August 12 from 1:00 p.m. – 3:00 p.m. at the Lakewood Library.

This is a great way to use your legal skills to give back to the community. Resource information and materials will be available so not to worry if you don't practice in an area of law that comes up. If you're interested in helping or if you need additional information on areas of practice needed, please email Cherie Harris at [cherieh@dayl.com](mailto:cherieh@dayl.com).

# Scenes from the DAYL Wine Tasting



Save the Date  
DAYL Charity Ball  
November 11, 2017 | 8:00 p.m.  
Fashion Industry Gallery

For sponsorship information, email Cherie Harris ([cherieh@dayl.com](mailto:cherieh@dayl.com))

Proceeds benefit the DAYL Foundation, a 501(c)(3) organization that provides grants and law student scholarships.

# You Can't Say That! What You Need to Know About Judicial Admissions and Estoppel

by Andy Jones

**Y**ou know *res judicata*. You're rock solid on collateral estoppel. But, how well do you know the difference between judicial estoppel and judicial admissions? Both give preclusive effect to prior testimony and representations by parties. And, both can help or hurt you and your client in more than just the pending case.

Judicial admissions come in two varieties: testimonial and documentary. *Cf. Mendoza v. Fid. & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692, 694 (Tex. 1980). Testimonial admissions are considered "quasi-admissions," while pleadings (documentary) are considered formal judicial admissions. *Id.*; see also *In re C.C.J.*, 244 S.W.3d 911, 923 (Tex. App.—Dallas 2008, no pet.). Testimonial admissions will not be considered conclusive judicial admissions unless they pass a five-factor test. *Mendoza*, 606 S.W.2d at 694.

The factors for a testimonial ("quasi-admission") to be considered a judicial admission are -

- 1) the declaration relied upon was made during the course of a judicial proceeding;
- 2) the statement is contrary to an essential fact embraced in the theory of recovery or defense asserted by the person giving the testimony;
- 3) the statement is deliberate, clear, and unequivocal - the hypothesis of mere mistake or slip of the tongue must be eliminated;
- 4) the giving of conclusive effect to the declaration will be consistent with the public policy upon which the rule is based; and
- 5) the statement is not also destructive of

the opposing party's theory of recovery. *Mendoza*, 606 S.W.2d at 694.

Why is this important? While a pleading or written stipulation is a judicial admission, a statement in an affidavit, sworn declaration, or deposition may also be a judicial admission, if the five-factors are met. Therefore, you and your client need to pay extra attention when testifying about outcome determinative issues. Generally, judicial admissions apply only to a pending case.

Judicial estoppel is a judicially created doctrine which, when applied, prevents a party from disputing, in the current case, a fact established as a matter of law in a previous proceeding. See *Bailey-Mason v. Mason*, 334 S.W.3d 39, 43 (Tex. App.—Dallas 2008, pet. denied). The Dallas Court of Appeals described judicial estoppel as a means to prevent a party from "playing fast and loose with the courts." *Webb v. City of Dallas*, 211 S.W.3d 808, 820 (Tex. App.—Dallas 2006, pet. denied). Remember, judicial estoppel is different from a judicial admission.

To be judicially estopped by a statement, four elements must be satisfied. The statement must -

- 1) be a sworn, prior inconsistent statement in a judicial proceeding;
  - 2) be a position "successfully maintained" in the prior proceeding;
  - 3) not be made inadvertently or by mistake, fraud, or duress;
  - 4) be deliberate, clear, and unequivocal.
- See *DeWoody v. Rippley*, 951 S.W.2d 935, 944 (Tex. App.—Fort Worth 1997, no writ).

Two important things to keep in mind

when assessing whether judicial estoppel applies. First, sworn, prior inconsistent statements don't just come from affidavits. Beware, counsel's signature on a document and representation to the Court is sufficient to satisfy the first factor of judicial estoppel for your client. See *Webb*, 211 S.W.3d at 820. Second, the second factor requires that the position to be estopped was one "successfully maintained" in a previous action. See *Ferguson v. Bldg. Materials Corp. of Am.*, 295 S.W.3d 642, 643 (Tex. 2009). Texas case law interprets this requirement to mean that the party to be estopped must prevail in the prior litigation. *Id.* Remember though, that the purpose of judicial estoppel is to stop a party from taking an inconsistent position from one case to a next. Thus, whether you won your last case may not be determinative of whether judicial estoppel applies.

Why is this important? Ever consider how the stipulations you made in your last case with a client could impact that client in the next case? What you, your witnesses, and your pleadings say in one case can impact the course of your next case. And, always remember your duty of candor to the tribunal. Tex. Disciplinary Rules Prof'l Conduct R. 3.03.

Being aware of judicial estoppel and judicial admissions based on testimony will help you and your client prepare for deposition and trial. More importantly, awareness of these doctrines will allow you to protect your client's rights in future cases.

Andy Jones is a Senior Associate at Savicki Lam, and he can be reached at [ajones@savickilamfirm.com](mailto:ajones@savickilamfirm.com).

**DAYL Dinner with the Judiciary**  
**Tuesday, October 16, 2017**  
**5:45 p.m. | Belo Mansion**

***Avoiding the Danger Zone: Navigating the Ethical Interplay Between Civil & Criminal Cases***

Presented by Judge Jane Boyle, United States District Judge for the Northern District of Texas, Rob Crain, Crain Lewis Brogdon, and Matt Orwig, Winston & Strawn.

**1.00 hour ethics credit**



*(l to r) Adrian Bower, Melanie Goolsby, Ashley Withers, and Kevin Segler presented a CLE in June on how to maximize your online presence within the Texas Disciplinary Rules of Professional Conduct.*

*DAYL's Wellness Committee, led by Hansary Laforest, organized a Salsa for Beginners class in July at the Ballet Burn Studio.*

## DAYL Foundation Fellows Reception



*The DAYL Foundation hosted a Fellows Reception on June 13, 2017 at Thompson & Knight LLP. The reception provided an opportunity for the Fellows of the Foundation to hear from prior year Foundation grant recipients and how a grant from the DAYL Foundation made an impact on their organization. The Fellows of the DAYL Foundation are a group of approximately 575 lawyers and judges who have pledged a financial commitment to the DAYL Foundation in an effort to help the Foundation provide grants to other 501(c)(3) organizations and scholarships for local law students.*