God Works in Mysterious Ways

This month’s contributions are from Austin (Douglas Laycock, Donald W. Dickson), Dallas (John Albach), Fort Bend (Judge Robert J. Kern), Longview (Charles P. Connolly), Houston (Lias J. Steen), Marshall (U.S. District Judge T. John Ward), San Antonio (Peter L. Kilpatrick), and Woodstock, Vt. (Thomas Hayes). Contributions to et cetera should be mailed to U.S. District Judge Jerry Buchmeyer, U.S. District Court, Northern District of Texas, 1100 Commerce St., 15th Floor, Dallas 75242, or emailed to tbj@texasbar.com.

LET ’EM SLEEP

This contribution, from U.S. District Judge T. John Ward of Marshall, is from an employment case Ward tried recently "wherein plaintiff was alleging race and age discrimination and retaliation for protected activity": The defense was that the plaintiff had been discharged because of poor performance. Part of the performance issue involved sleeping while on the job. The plaintiff was a home healthcare nurse.

The defense attorney asked the following question:

Attorney: Do any of you think that sleeping on the job is not grounds for firing someone?

J uror: I think if a person wants to sleep on the job and they can get away with it, that’s their prerogative. Let ’em sleep.

W ard adds: “The response brought considerable laughter from the remaining jurors.”

THE LEASE

Peter L. Kilpatrick of San Antonio (Langley & Banack, Inc.) sent this marvelous (!) provision from an August 2005 lease agreement:

“13. DISPUTES. If unanimously hereafter agreed by the parties, any disputes regarding this lease shall be settled by an old-fashioned fistfight or best single draw five-card poker hand.”

Peter adds: “The lease is between friends in the Marble Falls area, who, as you might guess, occasionally play poker together. I can hear the judge now, ‘Do you want to call your first witness or do you want to take it outside?’”

DID THEY REALLY ASK/SAY/PROVIDE THAT?

Judge Robert J. Kern of Fort Bend (387th District Court) submits this exchange from a recent hearing over which he presided:

Q. Where do you live in Fort Bend County?

A. In a house.

Q. Has your house always been in Fort Bend County?

Thomas Hayes of Woodstock, Vt. (Hayes & Windish) — who graduated from South Texas College of Law in 1982 — contributed this item:

In Vermont, prospective jurors are mailed a questionnaire which asks for basic information, including the question: “Do you have any physical or mental infirmity which would impair your capacity to serve as a juror?”

A Rutland woman replied, “I have severe (or maybe profound — can’t decide) inability to make decisions!” She had not checked either the “yes” or “no” box.

John Albach of Dallas — who is general counsel for Half Price Books — recently negotiated a “Subordination, Non-Disturbance, and Attornment Agreement” for a shopping center in Boston where Half Price Books was a tenant.

Because the lender’s attorney had made a number of mistakes in the proposed agreement she drafted, John decided to re-read the entire agreement and found this clause:

9. Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and unreasonable attorney’s fees.
CLASSIC TYPOS

Lias J. "Jeff" Steen of Houston (who is the "vice president, administration/legal" of ReedHycalog) has clients who were engaged in a declaratory judgment action filed in another state.

He asked outside counsel to conduct an expansive review of possible jurisdictional issues related to this particular battle which included a number of non-U.S. business entities.” However, when he received the billing statement, he noticed the following provision:

Per instructions from Mr. Steen, conduct an expensive search into any and all possible jurisdictional issues.

Donald W. Dickson of Austin (The Parker Law Firm) found this “horrendous typo in the ‘subject line’ of an email advertisement for a CLE course.”

Subject: Advanced Like Kind Real Estate Exchanges Steaming Video

MY BEST WITNESS

Douglas Laycock of Austin (University of Texas School of Law) contributed this excerpt from a deposition taken by Lea Kear, a student at the University of Oregon Law School.

While working for the Oregon Attorney General, Kear “took her first deposition of a convicted criminal defendant, now plaintiff, in a post-conviction proceeding,” and this exchange took place:

Q. Okay, and is there any other evidence that you believe the State failed to hand over or otherwise disclose?
A. Yes, one dog, my best witness.

Kear added: “I was tempted to ask him what he thought the dog would have said if called as a witness, but didn’t.”

Laycock adds: “Mature restraint for a first deposition. But if she had asked, you might have had a longer entry.”

GOD WORKS IN MYSTERIOUS WAYS

Charles P. Connolly of Longview (Merriman, Patterson, Connolly, & Hughes, L.L.P) submitted this contribution “by popular demand (around the office).”

Connolly explains: “The first excerpt is from the deposition of the husband; I looked up, and the wife, who was sitting beside him, had both hands clasped tightly over her mouth. I thought she was going to be ill.” The second exchange took place during the deposition of the wife:

Mr. Connolly: Are you okay?
Witness: You told me to keep my mouth shut and I am trying. I don’t agree with that. That’s why I’m covering my mouth.
Mr. Connolly: That’s okay, I’ll just ask you that later and you can just tell us everything you want to tell us.

Mr. Connolly: Well, Sharren, you were here while I took the short deposition of your husband.
Wife: Lord, yes. And I realize how blessed I am that his private parts are longer than his memory.
Mr. Connolly: Well, there you go!
Wife: So I guess God does work in mysterious ways.
Mr. Connolly: Well, that’s what I’ve always heard.