

ADMINISTRATION OF RULES OF EVIDENCE • ADVERTISING REVIEW • ANNUAL MEETING  
CHILD ABUSE AND NEGLECT • CONTINUING LEGAL EDUCATION • COURT RULES • CRIME VICTIMS  
DISABILITY ISSUES • JURY SERVICE • LAW FOCUSED EDUCATION • LAW PRACTICE MANAGEMENT  
LAWS RELATING TO IMMIGRATION AND NATIONALITY • LAWYER REFERRAL INFORMATION SERVICES  
LEGAL SERVICES TO THE POOR IN CRIMINAL MATTERS • LEGAL SERVICES TO THE POOR IN CIVIL MATTERS  
LOCAL BAR SERVICES • MINIMUM CONTINUING LEGAL EDUCATION • PARALEGAL  
PATTERN JURY CHARGES — BUSINESS, CONSUMER, INSURANCE AND EMPLOYMENT

## 2010–2011 State Bar of Texas

# COMMITTEE REPORTS

**Committee reports** are included in the July issue of the *Texas Bar Journal* to keep Texas lawyers updated on State Bar activities. The reports do not necessarily reflect the official policy of the State Bar of Texas. State Bar policy is formulated by the State Bar Board of Directors or by the membership through referendum. For more information or to complete a Committee Volunteer Interest Form, visit [texasbar.com/committees](http://texasbar.com/committees) or call (800) 204-2222, Ext. 1503.

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## ADMINISTRATION OF RULES OF EVIDENCE

*Robert B. Burns, Jr., Chair*

The committee advanced its project for the use of sworn (as opposed to notarized) statements on the penalty of perjury and their expanded use in civil litigation. After initial submission of a proposed amended rule and companion amendment to the criminal perjury statute, it was concluded that the entire project could best be completed through a single amendment to the Texas Civil Practice and Remedies Code. The proposed amendment to Chapter 132 was forwarded to and approved by the legislative committee. It has been sponsored in both the Texas House and Senate and is winding its way through the legislature for probable enactment.

The committee completed a proposed amendment to Rule 511, governing the effect of disclosure of a communication for information covered by the attorney-client privilege or work-product protection. The proposed amendment closely follows Federal Rule 502. The proposal has been forwarded with the recommendation that the Texas Supreme Court adopt the amendment. We are studying adoption of a Texas rule paralleling Federal Rule 412 that limits the use of evidence of a claimant's sexual behavior or sexually transmitted disease in a civil proceeding.

Another subcommittee is considering amendment to Rule 615 (production of statements of witnesses in criminal cases) to require the production of witness statements prior to the time that the witness testifies. A survey of state criminal district judges has been completed with a substantial majority favoring the amendment.

A new subcommittee is reviewing the entire TRE to propose restyled rules following the federal lead.

## ADVERTISING REVIEW

*Mike McKetta, Chair*

The committee continues to work in pursuit of its three objectives: 1) educate the Bar about the provisions of the Advertising Rules, 2) provide guidance to the State Bar regarding compliance with Part VII, and 3) ensure compliance with the Advertising Rules by reviewing and approving filed advertisements.

Both Gene Major, director of the State Bar Advertising Review Department, and various members of the committee gave a number of presentations to educate

lawyers and others about the requirements and restrictions imposed by the Advertising Rules. In addition, the committee continued working with the publishers of *SuperLawyers*, *Rising Stars*, and other similar publications to ensure that attorney advertising related to these publications is filed with and reviewed by the committee before final publication.

The committee also worked with members of the State Bar to give guidance as to the application of the Advertising Rules to Internet-based advertising, including social media sites, since Texas attorneys are increasingly using a wide variety of methods to advertise on the Internet. The committee drafted a revised Interpretive Comment 17, which was published in the March issue of the *Texas Bar Journal* and is available at [texasbar.com/adreview](http://texasbar.com/adreview).

Throughout the year, the committee met regularly in Austin to review advertisements filed with the State Bar as required by the Advertising Rules. The committee received more than 2,900 applications in the 2010–11 Bar year. The largest category of submissions filed were electronic/websites.

## ANNUAL MEETING

*Sylvia Cardona  
and Allan DuBois, Co-Chairs*

The 2011 Annual Meeting took place in San Antonio, June 23–24. The San Antonio-based Annual Meeting Committee aimed to offer a diverse selection of premium CLE for the best value and featured renowned speakers, including Medal of Honor recipient Mike Thornton, and bestselling authors Douglas Brinkley, H.W. Brands, Edmund Morris, and James B. Stewart.

Offering more than 80 top-notch learning sessions, this year's meeting featured programs for everyone from the first-year associate to the seasoned professional. State Bar sections provided practice-specific programs as well as joint events, including Legislative Updates, the Diversity Forum, the Adaptable Lawyer Legal Innovation Track, Immigration Reform, and Texas Legal Legends. Ethics Follies provided entertainment and ethics education. General counsel and in-house counsel from Valero, Wal-Mart, Clear Channel, USAA, and ERCOT offered invaluable experience at the Corporate Counsel Forum.

During Friday's General Session, 2010–11 President Terry Tottenham gave parting remarks and Bob Black was sworn in as 2011–12 president of the State Bar. At

a Texas Young Lawyers Association reception, TYLA President Jennifer Evans Morris thanked young lawyers for their service and gave farewell remarks. Natalie Cobb Koehler was sworn in as the 2011–12 president of TYLA. The San Antonio community and law firms statewide deserve acknowledgement and gratitude for their dedicated support of the Annual Meeting.

Be sure to mark your calendars for the 2012 Annual Meeting in Houston, June 14–15.

## CHILD ABUSE AND NEGLECT

*Barbara J. Elias-Perciful, Chair*

The committee celebrated its 25th anniversary with a reception at the 2010 Advanced Family Law Conference, with former Supreme Court Justice Harriet O'Neill speaking. The committee also marked the occasion by contributing articles to the *Texas Bar Journal* for a complete issue focused on matters pertaining to child abuse and neglect.

To address the educational needs of attorneys involved in child protection litigation, the committee once again conducted a one-day workshop at the Advanced Family Law Conference and worked with the Family Law Section to make this training more affordable for government and court-appointed attorneys. The committee continues to distribute copies of its DVD on shaken baby syndrome and has produced a Spanish-language version, which is being distributed as well.

The committee is also creating a public education program concerning fetal alcohol syndrome. The committee continues to post resources for child protection litigators at [texaslawyersforchildren.org](http://texaslawyersforchildren.org), which provides free access to legal research tools concerning child protection, communication tools allowing judges and attorneys to have a dialogue with colleagues, and provides a way to access pro bono opportunities in child protection cases. The committee selected an attorney to receive its annual Fairy Davenport Rutland Award for Distinguished Service to Children and Families, to be presented at the 2011 Advanced Family Law Conference. The committee is working on a website to inform the Bar of its projects and provide links to resources.

## CONTINUING LEGAL EDUCATION

*F.R. "Buck" Files, Jr., Chair*

Last year, the Continuing Legal Education (CLE) Committee, in concert with the

State Bar Board of Directors Professional Development Subcommittee, met twice in Austin to review challenges and opportunities facing TexasBarCLE. Overall, TexasBarCLE maintains its position as the leading provider of CLE in Texas. The committees reviewed operations and plans to ensure that standing is maintained and enhanced. Staff communication with, and training of, course directors continues to be refined to ensure the highest level of quality in the planning and presentation of a CLE course. Considerable discussion has been given to expanding the number of courses available to lawyers transitioning into new practice areas. In addition, development of courses aimed primarily at new attorneys has been explored. The committee has reviewed operations and plans for TexasBarBooks as it continues its transition toward a blended menu of offerings, including traditional books, electronic media (e.g., its new blog at **TexasBar Books.net**), and live webcasts devoted to particular books.

## COURT RULES

*Russ Meyer, Chair*

Last year, the committee focused on several proposals regarding the rules governing dispositive pretrial motions. The committee submitted to the Texas Supreme Court two versions of a proposed new Texas Rule of Civil Procedure 175a, governing dismissal for lack of subject-matter jurisdiction. The committee then recommended revisions to TRCP 91 (special exceptions), which would incorporate case law standards into the existing rule while adding a new subdivision addressing dismissal for failure to state a justiciable claim. The committee is considering recommending changes to TRCP 166a(i) to clarify the procedures governing hybrid summary-judgment motions that combine traditional and no-evidence motions.

The committee discussed several other potential rule amendments. It is considering proposing amendments to TRCP 21a to clarify the rules governing the filing and serving of pleadings and motions, including whether to allow service by email. Further, the committee recommended revising TRCP 252 (application for continuance) to incorporate the 150-mile standard from TRCP 176.3(a).

The committee is nearing completion of its project of collecting local trial-court rules (those approved under TRCP 3a)

and providing them to the Office of Court Administration for publication on the Texas Office of Court Administration (OCA) and State Bar websites. Having collected local rules from trial courts statewide last Bar term, the committee recently transferred to the OCA the rules for the courts in the 4th Administrative Judicial Region, which the OCA successfully uploaded onto a test website.

## CRIME VICTIMS

*Sarah Wannarka, Chair*

The goal of the Crime Victims Committee is to educate the legal profession and the public about legal and social resources available to crime victims. Our updated webpage ([texasbar.com/crimevictims](http://texasbar.com/crimevictims)) provides information on local, state, and federal crime victim rights and resources.

The committee has started drafting an article detailing crime victims' rights and resources. Once completed, the committee will submit this article to legal publications and newsletters across the state to help us reach as many practitioners as possible.

Members of the committee have traveled all over Texas — from Midland to Webb County — to present our signature training, "A Lawyer's Ethical Responsibilities to Crime Victims." The presentation details crime victims' rights, which includes the Crime Victims Compensation Program administered by the Office of the Texas Attorney General. This presentation has been approved for one hour of ethics CLE. Please contact the State Bar Committees Department if you would like to request this presentation at a meeting, CLE, or conference. Have PowerPoint, will travel.

The Crime Victims' committee has filmed a total of nine Ten Minute Mentor videos, which are available at [tyla.org](http://tyla.org). These presentations cover a wide range of victims' issues, such as child abuse; dating violence; family violence; human trafficking; state and federal crime victims' rights; and the Crime Victims Compensation Program.

## DISABILITY ISSUES

*Rosa E. Torres, Chair*

The Disability Issues Committee's mentorship program is now online and includes a mentor/mentee page facilitating registration for attorneys interested in volunteering to serve as mentors to law students or new attorneys with disabilities transitioning from the classroom to the practice of law.

With the tremendous assistance and cooperation of the State Bar's CLE department, the committee was successful in presenting a three-part webinar series on the Americans with Disabilities Act Amendments Act of 2008. Also, as in prior years, the committee participated in the planning of the upcoming Annual Conference on Special Education and Juvenile Justice Issues.

The committee initiated a project for individuals with disabilities who have difficulties accessing temporary shelters and is developing a "resource" that will provide guidance on the accessibility requirements of shelters. The goal is to promote awareness about disability issues and help remove barriers to access to individuals with disabilities.

The committee invited a representative from Grace After Fire, which helps female veterans, to speak at one of its quarterly meetings. This effort resulted in referrals that advanced the awareness of issues affecting women veterans.

The committee also met with the Texas Access to Justice Foundation to offer its experience, expertise, and recommendations regarding the use of cy pres monies received by the foundation. Through this effort, the committee was able to highlight issues impacting the disability community.

## JURY SERVICE

*Judge Barbara Walther, Chair*

The Jury Service Committee's primary goals this year were to promote juror education and to investigate ways to improve the jury service experience and increase juror participation. To that end, the committee developed and conducted a jury service survey for district and county clerks about local court practices and drafted a set of best practices for jury service to encourage statewide uniformity.

In January, the committee conducted the survey with the assistance and participation of the County and District Clerks Association. The goal was to learn what strategies are working to encourage broad citizen participation so that information can be shared with courts throughout the state. The committee received responses from 77 counties, which showed a wide variation of practices. The committee plans to write an analysis article to inform members of the Bar of the results and to also provide this information to the clerks. This information will also be useful for the committee's 2011–12 agenda.

In addition, a subcommittee worked on versions of best practices for jury service. These best practices included what information would be provided to jurors by the court on various topics, such as who will have access to juror information and what is done with the information; explaining the note-taking procedure, where allowed; and emphasizing that juror feedback is valuable to improving jury service. On April 1, the Supreme Court of Texas amended the Texas Rules of Civil Procedure and jury instructions specifically addressing most of these best practices.

## LAW FOCUSED EDUCATION

*John Padalino, Chair*

This year, the committee promoted and implemented iCivics ([icivics.org](http://icivics.org)), a web-based education project designed to teach students civics and inspire them to be active participants in our democracy. The program is the vision of Justice Sandra Day O'Connor, who is concerned that students are not getting the information and tools they need for civic participation and that civics teachers need better materials and support. This year, the committee also successfully implemented "Play by the Rules: Texas Laws for Youth," a student manual on Texas law written for middle school students, with more than 130 educators taking part. In addition, the Law Focused Education Committee made presentations to various community groups about Law Focused Education programs and resources. They also served as judges or facilitators for the We the People Competition on Dec. 13, 2010.

Law Focused Education committee members continue to speak to participants at local Law Focused Education events and promote the use of the Law Focused Education, Inc. website, [texaslre.org](http://texaslre.org).

## LAW PRACTICE MANAGEMENT

*William W. Miller Jr., Chair*

The Law Practice Management (LPM) Committee had a very active year. During the Annual Meeting in June 2010, it presented a day-long LPM seminar topped off by a two-hour presentation by LPM guru Jay Foonberg. Throughout the year, the LPM committee has provided speakers for and assisted with LPM programs across the state, including programs with the State Bar Military Law Section, Bell County Bar Association, Grayson County Bar Association, Guadalupe Bar Association, and Baylor Law School, South Texas College of

Law, St. Mary's Law School, Texas Tech Law School, Southern Methodist University Dedman School of Law, and the University of Houston Law Center.

The committee also partnered with TexasBarCLE in presenting numerous webcasts to Texas lawyers throughout the year, including "Strategies for Serving Your Clients Efficiently and Effectively," "Trust Accounts/IOLTA," "Choosing the Best Entity for Your Law Practice," and "Making a Virtual Law Office Work for You." In addition to webcasts, the committee planned and presented with TexasBarCLE the full "Perfecting Your Practice" CLE seminar in November 2010. By the end of the year, the committee conducted four quarterly committee meetings and, arising from those meetings, has submitted for consideration by the State Bar MCLE Committee proposed rule changes to its Accreditation Standards for CLE Activities used to determine what programs are eligible for CLE credit in Texas.

## LAWS RELATING TO IMMIGRATION & NATIONALITY

*Mark Harrington, Chair*

As evidenced by recent media attention, immigration law continues to be among the hottest fields of law. The committee held meetings this year at the University of Texas School of Law in Austin and Texas A&M University in College Station to address administrative activities of the local offices of the U.S. Citizenship & Immigration Service, issues concerning the ongoing tragedy of smuggling and trafficking immigrants into and through Texas, and the continued confusion caused by the issuance of specially designed Texas drivers licenses for immigrants. The committee also discussed the immigration-related bills reviewed by the Texas Legislature. At each meeting, members were encouraged to talk about a few recent immigration-related matters that might be of interest to the other members. The committee found this to be a great mechanism to ensure that all committee members are active at the meetings. Perhaps the most interesting activity was after the committee's meetings, when committee members independently held a set of Q&A sessions for students. These Q&A panel discussions were not official events, but many members made time in their schedules to participate in the events and to talk informally with students after the events. The students thoroughly enjoyed the Q&A sessions.

Committee members Dahlia Gutierrez and Mario Rojo Del Busto deserve thanks for organizing the Q&A sessions.

## LAWYER REFERRAL INFORMATION SERVICE

*Grace Weatherly, Chair*

The Lawyer Referral Information Service standing committee is working on a proposal to submit to the board of directors for the creation of two new programs: One is a Modest Means Panel, which would pair clients who have resources to pay an attorney at a reduced rate for basic legal services. This service would be available for those areas served by the State Bar Lawyer Referral Service and would require funding for additional staff to process the increased volume of calls that such a program is expected to generate.

The other new program is to establish a procedure for reporting and investigating those referral services (particularly online services) that are not certified by the State Bar.

## LEGAL SERVICES TO THE POOR IN CRIMINAL MATTERS

*Jeff Blackburn, Chair*

The committee completed and the State Bar Board approved for publication Performance Guidelines for Non-Capital Criminal Defense Representation. The Guidelines are similar to the Standard and Guidelines for Texas Capital Counsel, drafted by the committee and approved by the State Bar Board in 2006, and emphasize law unique to Texas. The committee is now focused on disseminating and implementing the Guidelines and will develop training materials, including a *Ten Minute Mentor* video and a substantive webinar.

The committee has developed a brochure educating misdemeanor defendants on the right to appointed counsel, how to obtain appointed counsel, and the collateral consequences of a misdemeanor conviction. The brochure, which the committee will have translated into Spanish, will be distributed throughout the state.

A continued focus of the committee's efforts since the implementation of the Fair Defense Act in 2001 is an exploration of the current public defender system in Texas. The committee has completed a survey of public defender offices throughout Texas and has drafted a report on the results, highlighting existing obstacles in the system and possible remedies. The committee will also conduct an analysis of

an existing statewide public defender system and consider the applicability of such a model in Texas.

This summer, the committee will present the inaugural State Bar Warren Burnett Award at the annual Advanced Criminal Law Seminar. The award, named for legendary criminal defense attorney Warren Burnett, will recognize extraordinary contributions to improving the quality of criminal legal representation to indigents in Texas.

## LEGAL SERVICES TO THE POOR IN CIVIL MATTERS

*Larry Spain, Chair*

During the past year, the committee recommended to the State Bar Board that they adopt a resolution urging all lawyers' organizations to encourage and request that all banks with which they do business become members of the Texas IOLTA Prime Partners Program of the Texas Access to Justice Foundation in support of civil legal services to the poor. The resolution was passed unanimously in January. The committee is now undertaking strategies to support the State Bar in conducting outreach and education to members of the Bar on the Prime Partners Program and the increased need of funding to support civil legal services to the poor in Texas.

The committee solicited nominations for the 2011 Pro Bono Excellence Awards and recommended recipients for each of the awards to the State Bar Board. A new Pro Bono Excellence Award was proposed to be awarded beginning next year to honor a judge, sitting or retired, who has provided exemplary service, including "outreach to attorneys to increase the quantity and quality of pro bono representation; modifications to court processes to increase access to justice; advocacy on behalf of access to justice; or service as a volunteer judge for pro bono clinics or other pro bono proceedings."

Additional projects of the committee over the past year included a review of the State Bar Pro Bono Policy and methods for enhancing pro bono participation by attorneys; the implementation of the LiveHelp program to expand access to justice in rural areas; and self-represented litigant initiatives.

## LOCAL BAR SERVICES

*Susan B. Sanchez, Chair*

The most important project for the committee is the Bar Leaders Conference.

The conference is a leadership training seminar that gives local bar officers and executive directors an opportunity to learn about State Bar initiatives, learn about leading and solving issues facing their local association, and network with other leaders from similar-sized bars or the same geographical region. A key component to the conference is the interaction between State Bar officers and directors and their constituents. The *Texas Lawyers for Texas Veterans* initiative officially launched in July 2010 at the Bar Leaders Conference in Houston, where an initial 25 Veterans Legal Clinics in a Box were distributed to local bar representatives.

The committee plans many annual programs, such as Law Day and the Stars of Texas Bars Awards. The 2011 *Legacy of John Adams, from Boston to Guantanamo* Law Day was held on May 9 at the Texas Law Center, where statewide winners of the poster, photograph, and editorial contests received their awards followed by a tour of the Court of Criminal Appeals. The Stars of Texas Bars Awards recognize the work of local bar associations. Award recipients were acknowledged at the Bar Leaders Recognition Luncheon at the State Bar Annual Meeting held June 23 in San Antonio.

Outreach to local bar associations through State Bar officers, staff, and Local Bar Services Committee members remains strong. Local bars receive sponsorships, free CLE speakers, State Bar presidential visits, program materials, and other assistance through local bar services.

## MINIMUM CONTINUING LEGAL EDUCATION

*Mark Sessions, Chair*

The Minimum Continuing Legal Education (MCLE) Committee monitored the response to amendments to the MCLE Regulations and Accreditation Standards approved by the State Bar Board of Directors in January 2010. These amendments, which took effect in June 2010, opened up MCLE accreditation to downloadable CLE programs. MCLE no longer requires "participatory" credit and now designates CLE activities as either "accredited CLE" or "self-study" CLE activities. Accredited CLE can be completed individually via accredited podcast, DVD, and CD (recorded from live, accredited CLE activities) or in the traditional manner of attending a live accredited CLE presentation.

The amended regulations also reduced the number of hours that may qualify as self-study and require attorneys to complete a minimum of 12 of the total 15-hour requirement through "accredited CLE" activities. As amended, the regulations allow a maximum of three credit hours that can be completed through self-study (through reading or attending non-accredited CLE activities). The change that requires 12 accredited CLE hours for compliance became effective June 1, 2011, with the first attorneys reporting under the new requirement in July 2011. The amendments are currently published at [texasbar.com/mcle](http://texasbar.com/mcle).

This year, the MCLE Committee also began a study of educational needs of the members of the State Bar with respect to law practice management. The study will continue through the 2011-2012 year. Changes to the Accreditation Standards may be considered as a result of this study.

## PARALEGAL

*Miguel David Wise, Chair*

In the past year, the Paralegal Committee continued its focus on overseeing paralegal practice in Texas and in communicating to the Texas legal community the proper role of paralegals. To these ends, the committee continues to receive semi-annual reports from the State Bar Paralegal Division. The committee is also in the process of developing various publications providing guidelines to maximize the use of paralegals by Texas attorneys. These publications should be ready for distribution this year.

The committee is also in the process of establishing ethical training guidelines for Texas paralegals and updating its website. Finally, the committee once again hosted its Texas Forum — this year Forum XXVIII — in February. This year's Forum featured lively and informative panel discussions on ethical vulnerabilities created by business scandals and social media. The topics covered by the panels included the use of social media in investigations, the legal impact of social media, and the duties of paralegals when attorneys overstep their boundaries. As in past years, the Forum was well-attended and well-received.

## PATTERN JURY CHARGES — BUSINESS, CONSUMER, INSURANCE & EMPLOYMENT

*Mark L. Kincaid, Chair*

The 2010 edition of *Texas Pattern Jury Charges: Business, Consumer, Insurance & Employment* was published in Fall 2010.

The 2010 edition contains new patterns for violations of the Texas Securities Act and a significant revision to the definition of proximate cause. In April, Judge Renee McElhane joined representatives of the PJC — General Negligence and PJC — Malpractice committees for a panel discussion of the revisions to the proximate cause definition that was webcast through TexasBarCLE.

The committee has now started work on the 2012 edition and is drafting new charges concerning invasion of privacy for inclusion in that edition. The committee also continues to work with the other Pattern Jury Charge drafting committees and the Pattern Jury Charge — Oversight committee to ensure consistency among the volumes. Drafts of the committee's work will be posted on [texasbarbooks.net](http://texasbarbooks.net) prior to publication. Practitioners and judges are invited to review the drafts and send the committee their comments and questions.

### **PATTERN JURY CHARGES — CRIMINAL**

*Alan Levy, Chair*

*Texas Criminal Pattern Jury Charge — Defenses* was published in Fall 2010. This book was the second in a series and included instructions on self-defense, defense of property, necessity, mistake of law, mistake of fact, insanity, entrapment, duress, and involuntary intoxication. Each of the pattern instructions is accompanied by an extensive commentary.

In addition, the committee has completed initial work on the third volume. This volume will include kidnapping; homicide offenses, including murder, manslaughter, and negligent homicide; assault, including sexual assault, deadly conduct, injury to a child, abandoning a child, and endangering a child; other sexual offenses, such as indecency with a child and continuing sex abuse; as well as robbery. This volume is expected to be available this fall.

The committee has also developed drafts for crimes against property, which is planned as the fourth volume. Following the end of the legislative session, the committee will review all volumes for needed changes and complete work on the instructions for crimes against property.

### **PATTERN JURY CHARGES — FAMILY**

*Joan F. Jenkins, Chair*

The Family Law Pattern Jury Charges Committee was charged by the State Bar with incorporating pattern jury charges

involving probate law into our publication. Last year the committee was expanded to include attorneys with probate experience. Jerry Frank Jones of Austin was selected to chair the Probate Subcommittee, which has largely completed their work in identifying the probate charges to be included in the 2011 volume. The Pattern Jury Charges Committee for family and probate had its first joint meeting in March and started the task of integrating the required probate charges into the existing family law volume. The committee will also be analyzing legislative changes to the Family Code and Probate Code following the 2011 Legislative Session. We anticipate the publication of an integrated Family Law/Probate Pattern Jury Charges volume by year's end, which will incorporate any necessary changes required by new or revised statutes enacted by the legislature.

### **PATTERN JURY CHARGES: GENERAL NEGLIGENCE & INTENTIONAL PERSONAL TORTS**

*Brock C. Akers, Chair*

The 2010 edition of *Texas Pattern Jury Charges: General Negligence & Intentional Personal Torts* was published in Fall 2010. The committee began the process of writing a new chapter on defenses, and this edition contains the first PJC on limitations in that chapter. The 2010 edition also includes a new PJC in the chapter on admonitory instructions — PJC 1.13, "Instructions on Juror's Use of Electronic Technology (Comment)." In April, Committee Chair Brock Akers and Vice Chair Mike Slack joined representatives of the PJC Business and PJC Malpractice committees for a panel discussion of the revisions to the proximate cause definition that was webcast through TexasBarCLE.

The committee has started work on the 2012 edition and is drafting new charges concerning nuisance, negligent hiring, and workers' compensation for inclusion in that edition. The committee also continues to work with the other Pattern Jury Charge drafting committees and the Pattern Jury Charge — Oversight committee to ensure consistency among the volumes.

### **PATTERN JURY CHARGES — MALPRACTICE, PREMISES, AND PRODUCTS**

*Jeff Levinger, Chair*

During the summer and fall of 2010, the committee put the finishing touches

on the 2010 edition of the *Texas Pattern Jury Charges: Malpractice, Premises, and Products*. A notable change in this edition is the revised definition of proximate cause. The committee also made several significant revisions to the chapters on malpractice and damages, including the addition of comments concerning the lost chance of survival, the use of the word "reasonable" instead of "ordinary" in the definition of negligence, and the type of economic damages that may be recoverable in legal malpractice cases. The premises chapter includes additional comments about the right to control and the liability of easement holders. And in the products chapter, the committee included a new question on negligence in products cases and made extensive changes to the questions on negligent undertaking and breach of warranty.

The committee is now in the process of identifying, researching, and drafting changes for the next edition, which is scheduled for publication in late 2012. Among the more significant changes that will likely appear in the new edition are questions or comments on fiduciary duty and disgorgement of fees; an instruction regarding spoliation; additional questions on the penal code violations that remove punitive damages caps and impose joint and several liability; the citation of new cases on premises defects versus negligent activity; sample economic damages instructions for accounting malpractice cases; and more refinement of the proximate cause language.

### **PATTERN JURY CHARGES — OVERSIGHT**

*Judge Tracy Christopher, Chair*

The Pattern Jury Charges — Oversight Committee reviews all changes made to each individual volume of the pattern jury charges. The committee worked with the other PJC committees to achieve a consistent work product. The committee also suggested potential new areas for the individual volumes to consider.

The committee continued its work on a plain language project — working to make the instructions to the jury clearer. We are pleased to announce that because of the committee's work on the revised instructions to Texas Rules of Civil Procedure 226a, the State Bar was a finalist for the 2011 ClearMark Award, Revised Document: Public Sector, from the Center for Plain Language.

## PUBLIC AFFAIRS

*Paul Watler, Chair*

The Public Affairs Committee accomplished its major initiatives spectacularly. As part of its commitment to fulfilling its objective “to expand public understanding of the legal system and to foster relations with the news media to further these goals,” the committee successfully planned and implemented the Annual Meeting Open Government Seminar and the Texas Gavel Awards media recognition program.

The increasingly popular and well-attended Open Government Seminar in conjunction with Annual Meeting is a superb forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform, addressing one of the main purposes of the Bar as stated in the State Bar Act. The committee has partnered with the Government Lawyers Section for the past few years to provide this exceptional CLE to members. Through outreach on behalf of the committee, the event provides a tremendous public service to media and public and government officials to educate them about legislative changes to open government laws, as well as emerging trends in how these laws directly affect them.

The committee has continued to enhance its partnership with the Freedom of Information Foundation of Texas in the presentation of the Texas Gavel Awards program, which recognizes journalistic excellence that fosters public understanding of the legal system, including investigative reporting that leads to improvements in the justice system. This partnership is extremely beneficial to both the State Bar and FOIFT, raising media visibility for both organizations.

## RACIAL DIVERSITY IN THE PROFESSION

*Daniella D. Landers, Chair*

The committee continued its efforts to increase awareness of issues affecting minorities in the profession and enhance the involvement of minority attorneys in the State Bar by promoting unique programs and other opportunities for professional and practice development, continuing legal education (CLE), and networking.

The committee sponsors the annual Texas Minority Attorney Program (TMAP) and the Texas Minority Counsel Program (TMCP) to provide CLE and networking opportunities for minority and women attorneys. TMAP provides minority and

women lawyers, especially those in solo practices or small law firms, with more than six hours of very affordable CLE credit and networking opportunities. In 2010, the committee held two successful TMAP seminars in Houston and San Antonio. In addition, TMCP brings minority and women lawyers together with corporate and governmental legal departments to network and discuss opportunities for the retention of minority and women lawyers as outside counsel. During last year’s TMCP in Dallas, the committee held a General Counsel/Managing Partners Diversity Forum to allow a candid discussion of diversity issues among general counsel and law firms leaders in Texas. In addition, the Corporate Counsel of the Year Award was presented to corporate counsel who have best promoted diversity within its legal department.

By continuing to promote the Minority Attorneys at the Podium (MAP) Project, the committee encourages diverse attorneys to write articles and be panelists for State Bar CLEs and seminars.

## REAL ESTATE FORMS

*Rick Spencer, Chair*

The Texas Real Estate Forms Manual now encompasses more than 350 forms set in 21 chapters of commentary. The Real Estate Forms Committee is responsible for monitoring changes in the field of real estate law and revising the Texas Real Estate Forms Manual to maintain its legal accuracy and relevance as a tool for Texas lawyers. In 2010–11, the committee reviewed state and federal legislation and case law and updated the structure of the manual to make it more user-friendly, with improved indexes and electronic features to complete a supplement. Last, the committee started work on the 2012 supplement, which will address changes from the 82nd Texas Legislature.

## TEXAS BAR JOURNAL BOARD OF EDITORS

*Michael C. Smith, Chair*

The *Texas Bar Journal* is the official publication of the State Bar of Texas. In continuous publication since 1938, the magazine serves as a publication of record for the Supreme Court of Texas, a scholarly legal journal, and the association magazine for the State Bar of Texas. Each month, the *Texas Bar Journal* is distributed to approximately 100,000 subscribers — the only publication reaching every lawyer in Texas.

Among its responsibilities, the Board of Editors reviews legal article submissions, develops special issues, and sets general editorial direction for the magazine.

In 2010–11, the *Texas Bar Journal* Board of Editors developed special issues on a range of subjects, from the effects of the economic downturn on the legal profession to an exploration of property in the 21st century. The magazine also helped to promote several State Bar and Texas Young Lawyers Association initiatives, including programs focusing on veterans, wellness issues, and child abuse. The Board produced a new installment of its popular “Party Talk” feature and continued its traditions of offering an informative “Year in Review” issue and an engaging selection of short stories written by Texas lawyers. The Board is working with staff on a readership survey and redesign.

## TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

*Patricia Chamblin, Chair*

In late 2009, the Texas Supreme Court published proposed amendments to the Texas Disciplinary Rules of Professional Conduct for public comment. At the end of the 2009–10 bar year, and during the first part of the 2010–11 bar year, the committee worked with the Court’s rules attorney, the State Bar Board’s Discipline & Client Attorney Assistance Program Committee, Bar leadership, and various lawyers and groups of lawyers to identify and address concerns raised during and after the public comment period and during public education hearings on the amendments.

In November 2010, the Supreme Court directed the State Bar to conduct a referendum on the proposed amendments to the disciplinary rules. During the fall and winter, the work of the committee and its members focused on the referendum. The committee and its members prepared and assisted in the preparation of various written materials to help educate Texas lawyers about the proposed amendments. In addition, committee members were presenters at many continuing legal education programs on the proposed amendments to the rules.

## TEXAS LAWYERS’ ASSISTANCE PROGRAM

*Cathy Herrington, Chair*

This past year, the staff, committee members, and volunteers with the Texas Lawyers’ Assistance Program (TLAP) made

more than 100 presentations at local and specialty bar association meetings, CLE events, and conferences about the ethical, personal, and professional implications of impairments in the legal profession and the confidential help available through TLAP and other resources. In addition to these specific educational outreach opportunities, TLAP continued to reach readers of the *Texas Bar Journal* and a variety of local bar associations through its publication of articles and advertisements throughout the year. TLAP also maintains an active online presence ([texasbar.com/tlap](http://texasbar.com/tlap)) and receives an increasing number of requests for online assistance.

TLAP has distributed more than 1,500 copies of its 2010 DVD, *Practicing Law and Wellness: Modern Strategies for the Lawyer Dealing with Addiction, Anxiety, and Depression* to individuals and organizations across the United States.

At the request of the Texas Board of Law Examiners (BLE) and the Chief Disciplinary Counsel's Office (CDC), the TLAP staff and committee have also contacted, recruited, and trained attorney monitors to verify compliance of recovery conditions as part of the probationary licensing program of the BLE and the disciplinary probations from the CDC and Commission for Lawyer Discipline. TLAP provides these services to the BLE and CDE while maintaining and protecting confidentiality as required under the Texas Health & Safety Code, Chapter 467. In its work with the BLE and CDC, TLAP does not advocate for or against a lawyer involved in those systems.

## TEXAS LAWYERS FOR TEXAS VETERANS

*Jo Ann Merica and Travis Sales, Co-Chairs*

*Texas Lawyers for Texas Veterans* (TLTV) is an initiative of 2010–11 State Bar President Terry Tottenham. TLTV's goal is to develop and assist pro bono legal clinics throughout the state for military veterans who otherwise cannot afford or do not have access to the legal services they need.

Legal clinics have been conducted in Austin, Bell County, Big Spring, Dallas, El Paso, Galveston, Houston, Lubbock, McKinney, Midland, Northwest Texas (Collin, Fannin, Grayson, Hunt, and Rockwall counties), San Antonio, and Tarrant County. Many of these clinics are held on a recurring monthly basis. Bar associations planning new clinics this year include Corpus Christi and The Woodlands.

In addition to the legal clinics, volunteers in Austin and Houston prepared wills and powers of attorney on Sept. 11, 2010, for two companies of deploying U.S. Marine reservists.

TLTV held a live lawyer training on veteran's benefits in Waco and has recorded a separate online CLE that is free for attorneys who will provide pro bono representation in a veteran's benefits case. The online CLE satisfies the CLE requirements for VA accreditation.

For information on how you can get involved or on upcoming clinics, visit [texasbar.com/veterans](http://texasbar.com/veterans).

## WEB SERVICES

*Mark I. Unger, Chair*

This past year saw a number of milestones for the association's online properties, with the input and advice of the Web Services Advisory Committee:

- In July 2010, TexasBar.com relaunched after a complete content rewrite, better organization to serve State Bar members and the public, a streamlined MyBarPage, and enhanced attorney profiles that include free website links and options for attorneys to include Facebook, Twitter, LinkedIn, and blog links.
- The existing vendor marketplace relaunched with a new design and brand, Texas Legal Vendors ([texaslegalvendors.com](http://texaslegalvendors.com)).
- At the June 2010 Annual Meeting, a legal innovation program featured keynote speaker Richard Susskind, a prominent legal futurist. The State Bar also held its first-ever Tweet Up, which more than 60 attorneys attended. As promotion for the meeting, the Bar held a Twitter novel contest that received more than 200 entries and was mentioned on the *Wall Street Journal Online*.
- For the June 2011 meeting, the Bar will have an app in the iTunes, Android, and BlackBerry stores by CrowdCompass, which will allow attendees to browse and select their

schedules and connect with other attendees.

- The committee continued to evaluate and look at options for the State Bar's groundbreaking private social network, Texas Bar Circle, and observed increased activity among Circle participants.

The committee will continue to support innovation in the Bar's online services, which are now central to each member's interaction with the State Bar in terms of profile management, dues payment, MCLE compliance, and practice tools.

## WOMEN IN THE PROFESSION

*Judy L. Ney, Chair*

The committee has continued publicity for its book on the history of the lives and careers of women lawyers in Texas, *Rough Road to Justice: The Journey of Women Lawyers in Texas*, written by Betty Chapman and published by TexasBarBooks. The book was presented at the State Bar Board of Director's meeting on April 29 to each Board member. Plans are being developed to honor the women legal pioneers still living who are identified in the book.

Another ongoing project is the creation of short videos for the *After the Bar Exam* project to advise new women lawyers in their search for work, either at a law firm, in solo practice, or in a job quest. Work is also progressing on the creation of a continuing legal education roundtable aimed at human resources and diversity officers in the law firm management arena. The committee is coordinating efforts for a program in conjunction with the University of Texas Women's Law Center. Committee members participated in the interviews for a new State Bar minority director. The committee continues to support and meet in conjunction with the Texas Minority Counsel Program. The committee is available as a resource for women veterans. As always, the committee continues to work with other bar groups and sections to promote the interest of women in the profession. ✪

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