



# LAW LIBRARY NEWS

a publication of the Fort Bend County Law Library

April 2021 ♦ Volume 29, Issue 4

## Attorney Lecture Series

The Law Library will be hosting an **Attorney Lecture Series** on Friday, **May 28 at 2 pm**. This class will be on **First Time Discovery**. Class will be taught by attorney Andrea Barr. This class will be virtual and taught over WebEx. Please register as spots will be limited. Go on to [www.fortbend.lib.tx.us](http://www.fortbend.lib.tx.us) to register. Registration will open in late April. For more information, contact the Law Library.

## In This Issue

Attorney Lecture Series	1
New & Updated Resources	1
FBC Bar News	1
Featured Resource	2
Technology Corner	2
Community News	3
Texas Case Law Update	4
Librarian Musings	5

## New & Updated Resources

### *How to Recover Attorney's Fees in Texas*

- 2021 Edition



### *Annotated Texas Family Code*

- 2020 Edition



### *Texas Legal Malpractice & Lawyer's Discipline*

- 2021 Edition



### *Federal Criminal Appeals*

- 2021 Edition

### *Texas Business Organizations Manual*

- 2020 Edition

### *Researching Texas Law*

- 4th Edition
- 2019 Pub Date

### *Texas Criminal Pattern Jury Charges*

- 2020 Edition
- Crimes against Persons & Property

### *The Legal Career: Knowing the Business*

- 2021 Pub Date



## FBC Bar News

### Fort Bend County Bar Association

The Fort Bend County Bar Association may have another virtual CLE. Date and topic is TBD. Check their website for information.

### Family Bar of Fort Bend County

The Family Bar may have another virtual CLE. Date and topic is TBD. Check their website for information.

### Fort Bend County Criminal Defense Attorneys Association

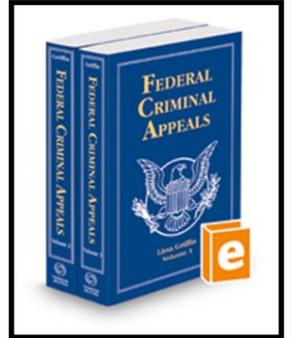
The Fort Bend County Criminal Defense Attorneys Association may have another virtual CLE. Date and topic is TBD. Check their website for information.



## Featured Resource: *Federal Criminal Appeals*

**By Jonathan Briggs**

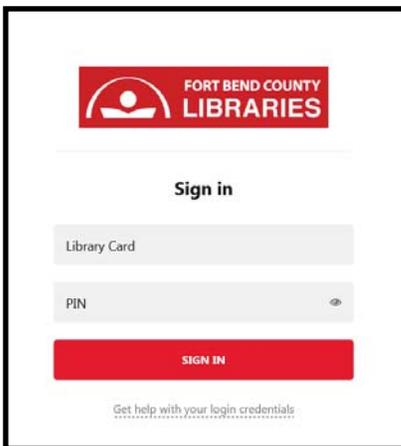
The majority of our patrons utilize the resources of the Fort Bend County Law Library for the depth and breadth of our Texas state law materials. However, our collection also encompasses a strong selection of Federal law materials. For example, we have recently received an updated 2021 print edition of Federal Criminal Appeals from Thomson Reuters, so it is a good time to revisit this 2-volume set that is indispensable to any attorney or pro se patron dealing with this issue. This edition which was just released in March is by Lissa Griffin, a Professor of Law at Pace University Law School and in her civil and criminal law practice was an appellate specialist. This publication has long been a staple of the Law Library. It provides chapters on the following topics: The Role of Appellate Counsel; Jurisdiction and Appealability; Justiciability; Scope of Review; Standards of Review; The Mechanics of Appealing; The Decision-Making Process; and, The Supreme Court. There are also Appendices that include the Federal



Rules of Appellate Procedure with Forms and Forms for Practice in the U.S. Courts of Appeals. Federal Criminal Appeals is also available via the Westlaw legal database on several of our patron computers. From Westlaw these materials can be either downloaded to your thumb drive or e-mailed to you in Word, Word Perfect, or PDF for free or printed in black and white for 10 cents per page. In addition to this excellent publication we also wanted to briefly update you on the rest of the Federal materials available here in print and/or via Lexis, Westlaw, and our other online databases. We have Kurzban’s Immigration Law Sourcebook; the U.S. Code and Code of Federal Regulations; all Federal case law; the extensive treatise Collier on Bankruptcy; the U.S. Master Tax Guide and other tax publications; Federal Habeas Corpus Practice & Procedure; extensive materials on Federal jury instructions and evidence; the multi-volume treatise Federal Practice and Procedure; Texas Rules of Court – Federal; James Publishing’s Social Security Disability Practice and Federal Criminal Practice; materials related to copyright, patent, and trademark law practice; and, the multi-volume West’s Federal Forms. Further, from the O’Connor’s series of practice guides and form books there are: Federal Rules Civil Trials; Federal Civil Forms; Federal Criminal Rules & Codes Plus; Federal Employment Codes Plus; and, Federal Intellectual Property Codes Plus. For more information please contact the Law Library.

## Technology Corner: Checking out Books on *Lexis Digital Library*

**By Andrew Bennett**



Have you used *Lexis Digital Library* yet? It is a quick and easy way to get some of our best resources on the go! All you need is a Fort Bend County Library card. To get a library card, visit our website. If you have one, let’s check out a book. First, go to our databases page. Then click on “View Resource” under *Lexis Digital Library*. Next, enter your library barcode (located on the back of your library card or if you just signed up, it will be sent to your email) and your PIN. If you do not know your PIN, give us a call. We can help you with that! Now, either browse or type in the book you are looking for. You can search by title or keyword. Click on the book you wish to check out. Finally, just click

“Read.” Books are checked out for 1 week and do return automatically. We have an upcoming training on using this database on April 16! Check our website for more information.





## Community News

- **Fort Bend County Law Library** will have a **Lexis Digital Library Training** on Friday, **April 16 at 2 pm**. Registration is required. Visit our website at <https://www.fortbend.lib.tx.us/event/live-lexis-digital-library-training>
- The **Texas State Law Library** has a lot of **digital resources** at your disposal. Please **create a digital library account** for access. For more information, visit their website at <https://www.sll.texas.gov/about-us/get-a-library-account/>.
- **Re:search TX** allows you to research case law from all 254 Texas counties. Some documents do require payment to access. Account set up is free. Go to <https://research.txcourts.gov/CourtRecordsSearch/Home>. Or you can check out Google Scholar for case law research at <http://scholar.google.com>.
- **E-File Texas** allows you to file your documents electronically to Fort Bend County courts or any other courts in the state of Texas. Go to <http://www.efiletexas.gov/>.
- **Harris County Law Library** is hosting a **Westlaw Training** on Thursday, **April 22 at 2 pm** and a **Lexis Training on Time Management for Attorneys** on **May 27 at 2 pm**. Classes are virtual. Both classes are approved for 1 hour CLE credit. To register, visit their website at <https://www.harriscountylawlibrary.org/events>.
- **Southwestern Association of Law Libraries** has a **FREE** post conference class on **Legal Research** on **Monday, April 26** at Register here: [\(30\) Southwestern Association of Law Libraries Annual Meeting Registration | Whova](#)

## Texas Lawyers

The State Bar of Texas offers confidential assistance to attorneys, judges, and law students who are facing substance abuse and mental health issues through its [Lawyers Assistance Program](#). Professional staff members are available 24/7 by phone to help with crisis counseling and referrals to local professionals and support groups. For assistance,

## To Include Items

If you have any information on upcoming CLEs, conferences, etc. that you think would be useful to include in the newsletter, please send an email to [abennett@fortbend.lib.tx.us](mailto:abennett@fortbend.lib.tx.us) with “Newsletter” as the subject.

## To Unsubscribe from

If you do not want to receive the Law Library newsletter, please send an email to [abennett@fortbend.lib.tx.us](mailto:abennett@fortbend.lib.tx.us) with “Unsubscribe” as the subject and include the email address to be removed.



## Texas Case Law Update

### Local Cases

- [Midhat B. Harris v. Nationstar Mortgage](#), No. 01-20-00038-CV (March 18, 2021): Aff'd. TC Judgment. (434th)
- [YPD Trucking Corp., et al. v. Faiz B. Badarpura](#), No. 01-20-00618-CV (March 18, 2021): Appeal Dism'd. (400th)
- [Stephanie Findley, et al. v. Fort Bend County Fair Assoc.](#), No. 01-20-00626-CV (March 18, 2021): Appeal Dism'd. (240th)
- [Samuel Johnson, Jr. v. The State of Texas](#), No. 01-19-00459-CR (March 30, 2021): Aff'd. TC Judgment. (400th)
- [Sosamma Chacko v. Chacko Thottiyil](#), No. 01-19-00798-CV (April 15, 2021): Aff'd. TC Judgment. (434th)
- [Terence Daniels v. Charles Schwab, Inc.](#), No. 14-21-00071-CV (March 18, 2021): Appeal Dism'd. (400th)
- [Fred L. Rodgers v. The State of Texas](#), No. 14-19-00216-CR (March 30, 2021): Aff'd. TC Judgment. (CCL#2)
- [Ex Parte Leonard W. Fusselman](#), No. 14-20-00549/00550/00551-CR (March 30, 2021): Aff'd. TC Judgment. (268th)
- [U.S. Bank National Assoc., et al. v. Kelley M. Bentley, et al.](#), No. 14-19-00324-CV (April 8, 2021): Aff'd. TC Judgment. (CCL#3)
- [Meta Planning + Design, LLC, et al. v. BGE, Inc.](#), No. 14-19-00253-CV (April 15, 2021): Aff'd. TC Judgment. (240th)

### Criminal Law—DWI/Probable Cause Affidavit

*Chase E. Wheeler v. The State of Texas*, 616 S.W.3d 858 (Tex.Crim.App. 2021). Case arose out of Tarrant County and the Second Court of Appeals in Fort Worth. Defendant/Appellant was arrested for DWI by the Pantego Police Department. The arresting officer submitted an unsworn probable cause affidavit to obtain a sample for blood-alcohol testing. The magistrate, not realizing that the document was unsworn, signed it and the warrant was then executed. Defendant filed a motion to suppress the blood-alcohol evidence arguing that the unsworn affidavit must be excluded pursuant to CCP 38.23 in that it violates the Texas Constitution and the CCP. The officer testified that per department policy he did not believe that an oath was required and that during his entire 14 months with the department he had never sworn to a single probable cause affidavit, though he had been instructed in search and seizure and Constitutional law at the police academy. He believed that the warrant was valid at the time of its execution. The magistrate also testified that in her experience Pantego P.D. officers would swear out oaths on these affidavits in front of another officer and would write their badge numbers to indicate it had been sworn to. (Further, on the night of the arrest the arresting officer was the sole Pantego P.D. officer on duty). The affidavit in question gave no such indication as having been sworn to. Not realizing it was unsworn she signed the affidavit because she believed it established probable cause and was not defective. The trial court denied the motion to suppress on the grounds that the situation fell within the good-faith exception to the exclusionary rule. The Court of Appeals reversed the trial court finding the lack of oath fatally defective and that the good-faith exception did not apply to the circumstances...that no objectively reasonable officer could believe that sworn affidavits are not required when seeking a search warrant. Finding that the trial court erred the Court of Appeals then conducted a harm analysis finding harm. The State filed a petition for discretionary review on the issue of the applicability of the good-faith exception to the exclusionary rule...was the evidence obtained by the police officer acting in objective good faith reliance upon a warrant issued by a neutral magistrate based on probable cause? (Texas CCP Art. 38.23(b)). The Court of Criminal Appeals agreed that no objectively reasonable officer would execute a search warrant knowing that it was procured through an unsworn probable cause affidavit. The complete absence of a sworn signature, an indispensable constitutional and statutory requirement, "is nowhere close to the line of valid law enforcement conduct that would bring this situation within the ambit of the good-faith exception." Affirmed.

### Estate & Probate—Fiduciary Duty/Reimbursement Claims/ *In Terrorem* Clause

*Kenneth W. Isaac v. Constance Burnside*, 616 S.W.3d 609 (Tex.App.-Houston [14th Dist.] 2020, pet. denied). Case arose out of the Probate Courts of Harris County following a bench trial. Decedent's widow (appellee/plaintiff) brought suit against the independent executor for breach fiduciary duty for his failure to give her one half of the money in the decedent's bank accounts and for failing to pay her for the funeral expenses he incurred. Defendant's motion for summary judgment was denied and after trial the Court rendered judgment in the plaintiff's favor finding that he breached his fiduciary duty in failing to distribute and reimburse as alleged and other actions. Defendant appealed on the grounds that the Health & Safety Code and the Will controlled the disposition of decedent's remains thus barring the reimbursement claims as a matter of law, that the trial court erred in denying his MSJ, that the filing of the claim for reimbursement triggered the will's *in terrorem* clause (i.e., a person challenging the will forfeits the devises to them), and that the court erred in not filing findings of fact and conclusions of law. Court of Appeals found that the reimbursement claim did not violate the H&SC or the Will provisions; that the denial of his MSJ was not reviewable; the failure to file findings of fact and conclusions of law was harmless error; and that the trial evidence did not prove as a matter of law that the reimbursement claim triggered the will's *in terrorem* clause. Affirmed.



## Librarian Musings: Don't Forget About these other Resources!

By Andrew Bennett

Our budget is fairly small compared to most libraries, even other government and courthouse libraries. However, we are able to provide a robust collection in both digital and print formats. We all know about Westlaw and Lexis Advance and the titles they provide both in digital and print, so I won't speak about those. In Texas, we have some smaller book publishers, namely James Publishing, the State Bar of Texas, and Knowles Publishing. These titles we have on our computers



here at the Law Library. Knowles Publishing, unfortunately, has gone out of business recently, but we still have their most recent titles available (which just came out last year!) James Publishing provides many books for Texas practitioners including *Texas Criminal Lawyers Handbook*, the accompanying *Texas Criminal Forms*, *Texas Probate Forms and Procedures*, among others. These books are great for attorneys needing a quick and easy practice guide that has easy to fill out forms. These are also great for pro se patrons for the same reasons. The other great thing about these titles is they provide both digital and

print formats. James Publishing used to provide a disc that had all the forms on them for patrons to take with them, however, the forms can now be downloaded through their website which we have added to our computers for you. In addition, they recently made a deal with Lexis and now all their books are available through *Lexis Digital Library* which has been shared for you through our website and accessible from home provided you have a library card. It allows users to download or print portions of the eBook so that you can start working from home!

The State Bar of Texas has a lot of books for Texas practitioners including *Texas Probate System Manual* and the *Texas Family Law Practice Manual*. For many years, you could only get these titles in print. Not too long ago they started providing a "library copy" in PDF in addition to the print copy. These PDF copies are searchable and given to the library free of charge. These have been added to each of the libraries' computers. The only downside is the forms would need to be converted to Word for editing.

Knowles Publishing books were always in a loose-leaf format and updates were typically provided on a yearly basis. Instead of an eBook, they provided theirs through a downloadable application. This application gave you an eBook of the title and has been added each of the libraries' computers. Titles include *Erisman's Reversible Errors* and *Texas Motion Practice Handbook*. The forms are in PDF and can be sent to your flash drive or to your email.

Not all publishers have gone to this hybrid format. Some like ALM, Juris Publishing, West Academic, and other smaller publishers still

require you to pay for both formats. However, close to 80% of our collection at the Fort Bend County Law Library is now available in both digital and print formats. The rule of thumb being, the farther you can go with your money the better.

