

**THIS IS THE CCBA NEWSLETTER**  
**IMPORTANT NEWS INSIDE**  
**PLEASE DO NOT DISCARD**



*Printed By*

PRST STD  
U.S. Postage  
PAID  
Corpus Christi, TX  
PERMIT NO. 113

555 N. Carancahua, STE 260  
Corpus Christi, TX 78478



## February Luncheon Meeting

Wednesday, February 14th, 12:00 p.m.  
Congressman Solomon Ortiz International Center  
402 Harbor Drive

**Speaker: Alice Oliver-Parrott, President, Texas Chapters of the American Board of Trial Advocates**

**Topic: "The Disappearing Jury Trial — Changes in Jury Trials"**

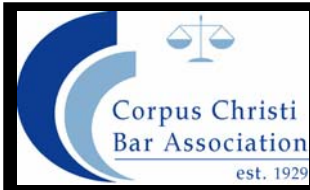
CLE Credit: .75 hour Participatory, **Litigation**

**Specialization Credit for Civil Trial and Personal Injury**

**Cost:** \$18.00 per person for members, \$23.00 per person for non-members if reserved by noon, Tuesday, February 13, 2007. Call the Bar Office at 883-4022 to RSVP or e-mail us at [sgonzales@corpusbar.com](mailto:sgonzales@corpusbar.com). All reservations must be paid for. The cost at the door will be \$20.00 for members, \$25.00 for non-members. **PLEASE NOTE THAT THIS IS A \$2.00 PRICE INCREASE DUE TO INCREASED COSTS AT THE ORTIZ CENTER.**

### L NOTE 7

**ADDED ADVANTAGE OF ADVANCE RESERVATIONS** — THOSE WHO RSVP IN ADVANCE WILL HAVE THEIR CLE ATTENDANCE CARDS PRE-POPULATED SO ALL THEY HAVE TO DO IS TO SIGN THE CARD (AND, OF COURSE, STAY FOR THE PRESENTATION) IN ORDER TO OBTAIN THEIR CLE CREDIT — Just another service of your Corpus Christi Bar Association



# Newsletter

February 2007

## ABA Issues Formal Opinion Approving the Review and Use of Opposing Counsel's or an Adverse Party's Metadata

The American Bar Association has issued a formal opinion (Formal Opinion 06-442) on the review and use of metadata. E-mail and other electronic documents frequently contain "embedded" information. Such embedded information is commonly referred to as "metadata." (See CCBA Newsletter, September 2006 for a more in depth explanation of "metadata")

"[The] opinion addresses whether [the receiving] lawyer [can] review and use embedded information contained in e-mail or other electronic documents, whether received from opposing counsel, an adverse party, or an agent of an adverse party," when the "the receiving lawyer did not obtain the electronic documents in a manner that was criminal, fraudulent, deceitful, or otherwise improper." **The conclusion reached by the Standing Committee on Ethics and Professional Responsibility (the Committee) is that "the [ABA Model Rules of Professional Conduct (Rules)] [generally] permit a lawyer to [review and use embedded information contained in e-mail and other electronic documents whether received from opposing counsel, an adverse party, or an agent of an adverse party.]"**

The Committee notes that "[c]omment [16] to Model Rule 1.6 states that '[a] lawyer must act competently to safe-

guard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision." (Citations omitted)

It also notes that "[n]ot all metadata . . . is of any consequence." Nevertheless, the Committee continues that "[i]n some instances . . . such as when a party to a lawsuit is attempting to establish 'who knew what when,' the date and time that a critical document was created or who drafted it may be a critical piece of information." Other examples given by the Committee of when metadata can be of high import are when "a payment amount is being negotiated and a . . . change or comment in a draft agreement . . . suggests how much more the opposing party is willing to pay or how much less they might take."

In explaining its position, "[t]he Committee . . . notes that the Rules do not contain any specific prohibition against a lawyer's reviewing and using embedded information." The Committee observes that "[t]he most closely applicable rule, Rule 4.4(b) relates to a lawyer's receipt of inadvertently sent information . . . [and notes that it] is silent as to the ethical propriety of a lawyer's review or use of such information." The Committee continues its explanation with the following:

The Rule provides only that "[a] lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender." Comment [3] to Model Rule 4.4

indicates that, unless other law requires otherwise, a lawyer who receives an inadvertently sent document ordinarily may, but is not required to, return it unread, as a matter of professional judgment.

In addressing Rule 4.4, the Committee also noted that

Comment [2] to Rule 4.4 confirms that the word "document" includes e-mail and other electronic documents. The Comment also indicates that the notification requirement exists "in order to permit the [sender] to take protective measures" and includes a recognition that applicable other law (outside the applicable rules of professional conduct) may require the lawyer to take additional steps beyond notification.

The Committee further observed that after Rule 4.4(b) was adopted in 2002, Formal Opinion 05-437 withdrew Formal Opinion 92-368, which

opined that a lawyer who receives materials that on their face appear to be subject to the attorney-client privilege or otherwise confidential under Model Rule 1.6, under circumstances where it is clear they were not intended for the receiving lawyer, should refrain from examining the materials, notify the sending lawyer, and abide by the instructions of the sending lawyer.

As a caveat, the Committee acknowledges that other authorities (New York and Florida) have examined the issue in light of lawyers' duty to be honest and "have found [reviewing and using metadata] ethically impermissible." Those opinions are based "in part on language contained in present Rule 8.4(c) and (d) that prohibits engaging in conduct 'involving dishonesty, fraud, deceit, or misrepresentation' or 'that is prejudicial to the administration of justice.'"

The Committee explains that its contrary position is based on two aspects of the Rules. First, the Committee notes that it

"does not believe that a lawyer, by acting within the circumstances assumed by the instant opinion, would violate either of those paragraphs of Rule 8.4." Second, the Committee notes that it "reads the recent addition of Rule 4.4(b) identifying the sole requirement of providing notice to the sender of the receipt of inadvertently sent information, as evidence of the intention to set no other specific restrictions on the receiving lawyer's conduct found in other Rules."

In closing, the Committee makes a couple of observations that could be significant. First, after noting that counsel can take action to prevent the transmission of metadata with their electronic communications and documents, the Committee states that

[o]f course, when responding to discovery, a lawyer must not alter a document when it would be unlawful or unethical to do so, e.g., Rule 3.4(a) ("A lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to any such act[.]")

Second, the Committee notes that

On April 12, 2006, the Supreme Court of the United States approved extensive amendments to the Federal Rules of Civil Procedure relating to discovery of electronic documents. . . Among other provisions, certain of the amendments allow a producing party to pull back privileged information and work product under certain circumstances. The amendments [were] effective December 1, 2006.

To date, the State Bar of Texas has not issued an opinion or a rule with regard to metadata. A copy of ABA Opinion 06-442 can be obtained from your CCBA Office at [dking@corpusbar.com](mailto:dking@corpusbar.com), [sgonzales@corpusbar.com](mailto:sgonzales@corpusbar.com), voice 883-4022, or fax 883-0353.

## Board Actions

The CCBA Board met January 23rd and took the following actions:

Agreed to provide free advertising space to CASA and allow them to participate in the Family Law Seminar in October  
Agreed to hold a 3 hour Ethics Seminar on March 30th

Agreed to approach Judiciary to request that schedule court sessions so members can attend the Criminal Law seminar and the monthly Luncheons

Agreed to offer a \$100.00 reward for return of the Master Copy of the 2007 pictorial Directory, no questions asked

Decided to exclude Municipal Judges from the Judicial Evaluation and to include Federal Judges

Agreed to set March 22 as the date for the March Docket Call

Agreed to offer the Aransas Bar the opportunity to participate in the Judicial evaluation

## Mark Your Calendars

(Changes and seminars noted in **Bold**)

### February 2007

- 3** — **Mock Trial Competition**
- 14 — Joint Luncheon with CPA's, 12:00 p.m., Ortiz Center
- 21 — Criminal Defense Section Luncheon, 12:00 p.m., Katz
- 27 — Board of Directors Meeting

### March 2007

- Nominating Committee, Docket Call,
- 12 — 16 CCISD Spring Break
- 7** — **Coastal Bend Women Lawyers Association Luncheon**  
**Speaker: Mavis Leno**
- 22** — **Docket Call**
- 27 — Board of Directors Meeting
- 30** — **Ethics Seminar**

### April 2007

- Election of New Board

- 2 — Passover Begins
- 6 — Good Friday
- 8 — Easter
- 11 — Annual Meeting Luncheon, 12:00 p.m., Ortiz Center
- 20** — **Advanced Civil Trial Seminar**
- 24 — Board of Directors Meeting

### May 2007

- 3 — Law Day Reception, 5:30 p.m. To 7:30 p.m., Ortiz Center
- 4 — Law Day Luncheon, 11:30 a.m. Ortiz Center, Judge Carl E. Stewart, 5<sup>th</sup> Circuit Court of Appeals
- 18** — **Criminal Law Seminar**
- 22 — Board of Directors Meeting
- 28 — Holiday, Office Closed

### June 2007

- Docket Call, Baseball with the Bench, State Bar Annual Meeting
- 21 — 22 State Bar Annual Meeting
- 26 — Board of Directors Joint Meeting with new Board

**Does your client need to sell their home?**

We can help

**WE BUY HOMES**

Any condition Any Area  
Any Price Range

**\$1000.00 Referral Fee Paid**

**1-877-205-3623** (voice mail)

[www.rescuemyfsbo.com](http://www.rescuemyfsbo.com)

## BAKER & BAKER, PC

BRENDA B. BAKER EDWIN W. BAKER\*

GUARDIANSHIP  
MEDICAID ELIGIBILITY  
SPECIAL NEEDS TRUSTS  
MILLER TRUSTS  
WILLS & PROBATE

(361) 985-2226

5350 SOUTH STAPLES • SUITE 106  
CORPUS CHRISTI, TEXAS 78411



*The*  
**GUARANTY TITLE BUILDING**

**A CORPUS CHRISTI LANDMARK**

- 154 - 1,000 sq. ft. Offices Available
- Classic Historic Red Brick Building
- Modern Renovated Office Facilities
- Rapid Access to I-37 & Ocean Drive

**Corner of Chaparral & Mann-Downtown near the Federal Courthouse**

**LANDLORD  
RESOURCES**

**857•8991**

For more information contact

**Angie Flores**

[aflores@landlord-resources.com](mailto:aflores@landlord-resources.com)



## Court of Criminal Appeals Judge January Speaker

Following on the heels of the Coastal Bend Criminal Defense Lawyers becoming a section of CCBA, Judge Paul Womack of the Texas Court of Criminal Appeals was the guest speaker at the CCBA January Luncheon. He provided



Judge Paul Womack Speaks at January Luncheon

an update on the Court of Criminal Appeals and its workload. 66 attended.

### **Mediation Services**

Family Law

Probate Law

Civil Actions

\$395 per party, full day

\$250 per party, half day

### **F. Lakhani**

Attorney-Mediator

1205 Airline Rd.

Corpus Christi, TX 78412

361.993.1313

## Mavis Leno to Speak at CBWLA's Spring Luncheon

The Coastal Bend Women Lawyers Association's annual Spring Luncheon honoring "Women of Distinction" will be **Wednesday March 7th**. CBWLA's Spring Luncheon is held annually during Women's History Month.

This year's speaker will be Mavis Leon. Her presentation is entitled "Making a Difference: A Voice for Afghan Women and Girls." The luncheon will commence at **12:00 noon** at the **Omni Bayfront Hotel**. The cost will be **\$40 for CBWLA members**, and **\$45 for non-CBWLA members if purchased on or before February 28th**. After that it will be \$45 for members and \$50 for non-members. CBWLA is seeking sponsors to help defray the costs of the luncheon and increase the amount donated to charity.

If you have questions or wish to purchase a sponsorship, please contact Kathleen Day at 888-4342 or Sandy Sterba-Boatright at 866-8136.

### **Ethics Seminar to Be Held March 30th**

CCBA will present 3.0 hours of ETHICS CLE on Friday afternoon, March 30th. It will be at the Ortiz International Convention Center commencing at 1:00 p.m. Stay tuned for more information.

### **"Rookie Judges" Speak at Young Lawyers' Luncheon**

Newly elected Judges, the Honorable Bobby Galvan of the 94th District Court and the Honorable John Martinez of County Court of Law Number 3, were the guest speakers at the Corpus Christi Young Lawyers Association's January Luncheon. They provided the "Perspective from the Bench." Each explained in general terms how he would run his court and answered specific questions from those in attendance. The attendance demonstrated the popularity of the judges. It was literally standing room



Judge Bobby Galvan explains the procedures he will follow in the 94th District Court.

only as there were 38 in attendance. In addition to the presentations by the Judges, Sandra Garza of the Texas Rio



Judge John Martinez fields a question.

Grande Legal Aid made a pitch for additional lawyer participants in the Legal Aid pro bono program.

### **Cassidy's Irish Pub Hosts CCYLA January Happy Hour**

It was fun-filled Thursday evening as the



Ira Miller and Anita Shahani at CCYLA Happy Hour

Corpus Christi Young Lawyers Association invaded Cassidy's Irish Pub for their



Jerry Goetz and Tim McCoy were among those attending the CCYLA January Happy Hour.

January Happy Hour. The Happy Hours have been such a success that the Young Lawyers will be holding a "Fat Tuesday" Happy Hour at Cassidy's. Stay tuned for the details.

## **South Texas Rio Grande Valley Edinburg firm**

**Seeks 3+ year associate  
with excellent writing  
skills and experience  
in insurance  
defense/coverage.**

**Interested applicants  
should fax a detailed  
resume w/salary  
requirements and a list  
of references to  
(956) 289-2299.**

# CCBA Directory Errata Sheet

## February 2007

### Additions:

Pg. 17 – **Newman, Baker F. III**  
(Tara)  
Davis, Hutchinson & Wilkerson, L.L.P.  
802 N. Carancahua, Ste. 1270 (78470)  
Office, 882-2272  
Fax, 882-1191  
E-Mail, [nbaker@dhwlaw.com](mailto:nbaker@dhwlaw.com)  
Real Estate &  
Business Transactions

Pg. 18 – **Benavides, Justice Gina**  
13th Court of Appeals  
100 E. Cano, 5<sup>th</sup> Floor  
Edinburg, TX 78539  
Office, 956-318-2405  
Fax, 956-318-2403  
E-Mail, [gina.benavides@courts.state.tx.us](mailto:gina.benavides@courts.state.tx.us)

Pg. 22 – **Cervantes, Gabriel “Marc”**  
(Lisa)  
Rodriguez Law Firm  
600 Leopard, Ste. 2110 (78473)  
Office, 883-8900  
Fax, 883-6609  
E-Mail, [marc@debrarodriguez.com](mailto:marc@debrarodriguez.com)

Pg. 29 – **Galvan, Deeanne Svoboda**  
(Robert)  
P.O. Box 331208 (78463)  
Office, 442-9330  
Fax, 986-8849  
E-Mail, [robertgalvan@grandecom.net](mailto:robertgalvan@grandecom.net)  
Criminal Law

Pg. 33 – **Gwyther, D.R. “Doug”, Jr.**  
(Georgene)  
CGT Law Group International, L.L.P.  
500 N. Water St., 8<sup>th</sup> Floor South (78471)  
Office, 884-6201  
Fax, 884-6207  
E-Mail, [dgwyther@cgtlaw.com](mailto:dgwyther@cgtlaw.com)  
64 Rock Creek Dr. (78412)  
442-2040  
Personal Injury  
Product Liability

Pg. 39 – **Jackson, Alissa Adkins**  
(Robert Jackson)  
Nueces County Attorney’s Office  
901 Leopard, Room 207 (78401)  
Office, 888-0391  
Fax, 888-0577  
E-Mail, [alissa.jackson@co.nueces.tx.us](mailto:alissa.jackson@co.nueces.tx.us)

Pg. 52 – **Reyna, Juan P.**  
(Christina)  
Juan P. Reyna, P.C.  
5959 S. Staples, Ste. 208B (78413)  
Office, 993-8100  
Fax, 993-8101  
E-Mail, [jreynalaw@yahoo.com](mailto:jreynalaw@yahoo.com)

Pg. 56 – **Smith, Charles C.**  
(Lisa)  
Charles C. Smith, Attorney at Law  
615 N. Upper Broadway, Ste. 510 (78477)  
Office, 883-1055  
Fax, 883-4041  
Home, 992-6352

### Additions:

Pg. 60 – **Vaughan, Monica**  
(Roberto T. Alaniz)  
Home, 882-4120  
E-Mail, [monica.vaughan@gmail.com](mailto:monica.vaughan@gmail.com)

### Corrections:

Pg. 16 – **Anthony, Brett**  
Anthony Peterson & Purnell  
500 N. Water St., Ste. 1010 (78471)  
Office, 687-1000  
Fax, 687-1010  
E-Mail, [banthony@apandplaw.com](mailto:banthony@apandplaw.com)  
7842 Beauvais (78414)  
Home, 991-7327  
Civil Litigation

Pg. 18 – **Batman, Christopher**  
The Gould Law Firm  
5959 S. Staples, Ste. 228 (78413)  
Office, 994-9800  
Fax, 994-9801  
E-Mail, [chrisbatman@sbcglobal.net](mailto:chrisbatman@sbcglobal.net)

Pg. 24 – **Corona, Luis**  
The Law Office of Luis J. Corona  
719 S. Shoreline, Ste. 301 (78401)

Pg. 29 – **Frost-Gonzales, Kim**  
E-Mail, [kimfrostgonzales@msn.com](mailto:kimfrostgonzales@msn.com)

**Hall, Daniel**  
(Lanette)  
The Mediation & Law Offices of Daniel Hall  
5262 S. Staples, Ste. 300 (78411)  
Office, 510-4981  
Fax, 1-866-907-6432  
E-Mail, [Daniel@danielhallesq.com](mailto:Daniel@danielhallesq.com)  
1001 Harbor Lights Drive (78412)  
Mediation

Pg. 37 – **Hopkins, Josh W.**  
Wigington Rumley, L.L.P.  
345 Pasadena (78411)  
Home, 853-1010

Pg. 38 – **Hubert, John T.**  
516 W. Lee  
Kingsville, TX 78363  
Office, 361-319-5748  
E-Mail, [johnhubertesq@gmail.com](mailto:johnhubertesq@gmail.com)

### Corrections:

Pg. 42 – **Logan, Alison J.**  
City of Corpus Christi – Legal Dept.  
1201 Leopard St. (78469)  
P.O. Box 9277 (78469)  
Office, 826-3376  
Fax, 826-3239  
E-Mail, [alisonl@cctexas.com](mailto:alisonl@cctexas.com)

Pg. 48 – **Obregon, Danice L.**  
Fax, 643-6795  
Home, 643-6768

Pg. 49 – **Peterson, Douglas P.**  
Anthony Peterson & Purnell  
500 N. Water St., Ste. 1010 (78471)  
Office, 687-1000  
Fax, 687-1010  
E-Mail, [dpeterson@apandplaw.com](mailto:dpeterson@apandplaw.com)  
4701 Schwerin Lake (78413)  
Civil Litigation

Pg. 50 – **Price, Kenneth A.**  
Wayne Wright, LLP  
2820 SPID, Ste. 102 (78415)  
Office, 884-9600  
Fax, 225-3800  
E-Mail, [kprice@waynewright.com](mailto:kprice@waynewright.com)  
Social Security

Pg. 51 – **Purnell, Simon B.**  
Anthony Peterson & Purnell  
500 N. Water St., Ste. 1010 (78471)  
Office, 687-1000  
Fax, 687-1010  
E-Mail, [spurnell@apandplaw.com](mailto:spurnell@apandplaw.com)  
Civil Litigation

Pg. 52 – **Ritch, Joseph E.**  
Wigington Rubley, L.L.P.  
800 N. Shoreline, Ste. 1400 South (78401)  
Office, 885-7500  
Fax, 885-0487  
E-Mail, [jritch@wigrum.com](mailto:jritch@wigrum.com)  
Civil Litigation  
Tax Litigation

Pg. 53 – **Rodriguez, Debra**  
600 Leopard, Ste. 2110 (78473)

Pg. 53 – **Rumley, David**  
E-Mail, [drumley@wigrum.com](mailto:drumley@wigrum.com)

Pg. 59 – **Trevino, Jerry J.**  
E-Mail, [jerryj@jjtlaw.com](mailto:jerryj@jjtlaw.com)

Pg. 61 – **Watts, Mikal C.**  
Bank of America Plaza  
300 Convent St., Ste. 100  
San Antonio, TX 78205

Pg. 62 – **Wigington, Jeffery G.**  
Wigington Rumley, L.L.P.  
21 Hewit Dr. (78404)