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THE OFFICIAL NEWSLETTER OF THE COLLIN COUNTY LAW LIBRARY

ISSUE 2014-03

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AUGUST 2014

Useful Internet Sites and Articles

Supreme Court of Texas Rules on Spoliation

“High Court Rules on Long-Awaited Spoliation Case” *Texas Lawyer*, July 28, 2014

On July 3rd, the Supreme Court of Texas issued its ruling in the case of *Brookshire Bros Ltd. V. Jerry Aldridge*. In 2004, Jerry Aldridge slipped and fell while in a Brookshire Brothers store but did not report his fall to the store. Less than two hours later Aldridge had to go to the emergency room and reported his fall to the store a week later. The fall was captured on surveillance video but only a short portion of the video was kept; the remainder of the tape was recorded over pursuant to the store’s retention policy. The case went to trial and the jury heard evidence on whether or not Brookshire Brother’s erasure of the video constituted spoliation. The jury found the defendants negligent and awarded Adlridge over \$1 million in damages. The court of appeals affirmed and the case then went before the Supreme Court of Texas.

The Supreme Court of Texas reversed and remanded the case, ruling that the trial court erred in allowing the jury to hear evidence on spoliation and in providing a spoliation instruction. The opinion states that a party “must intentionally spoliolate evidence in order for a spoliation instruction to constitute an appropriate remedy by concealing or destroying discoverable evidence.” However, the opinion also outlines an exception to this rule. If the spoliation of the evidence “so prejudices the opposing party that it is irreparably deprived of meaningful ability to present a claim or defense, a court should have the discretion to remedy that with a spoliation instruction, even if the trial court determines that the evidence was only negligently lost or destroyed.” A copy of the opinion is available in the law library.

The federal rules concerning spoliation may also be amended. The Administrative Office of the U.S. Courts’ Committee on Rules & Procedure issued a proposal in April that is awaiting approval from the Judicial Conference Review. The rule change proposes that if spoliation is found, those parties responsible will be subject to sanctions if the court finds that the spoiler’s actions were “willful or in bad faith or caused substantial prejudice in the litigation.”

Time to Reconsider Retention Policies

“Rethinking Limited-Duration Retention Policies” *Texas Lawyer*, July 28, 2014

The recent decision by the Supreme Court of Texas about spoliation may be a good reason for companies to reconsider retention policies currently in place. In a recent article, commercial litigation attorney Justin Levy warns that the “intentional spoliation” exception in the opinion may have far-reaching consequences for businesses. In addition to the exception outlined in the previous article, the courts will also permit a spoliation instruction if a party acts with “willful blindness by allowing for the destruction of evidence without knowing whether it will be relevant or discoverable.” Mr. Levy stresses that there may be a new evidentiary burden for companies in light of the opinion and at the very least, parties can expect to testify as to the reasonableness of the corporate retention policy. If the retention policy is based on a random selection of time, the court is more likely to award a spoliation instruction against it. Mr. Levy concludes his article by making two suggestions. The first is that companies re-examine retention polices. The second suggestion is that attorneys review their preservation of evidence letters to ensure it complies with the language in the *Brookshire Brothers* opinion.

Copies of these articles are available in the library, or from the law librarian via email:

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Spotlight on the Supremes

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Hours of Operation:
Monday–Friday
8:00 am–5:00 pm

Approximately four years ago, the Texas Supreme Court appointed a task force to update the rules for international lawyers in Texas. The task force recommended rule changes to the Court and on June 9th the judges signed an order that proposed “streamlined international law practice rules in Texas.” These rules will go into effect on October 1, 2014. The new rules will allow for foreign lawyers to appear with local counsel in a Texas court as a counsel of record. Furthermore, lawyers that are currently licensed in civil law countries may be able to sit for the Texas bar exam after completing a LLM from an ABA approved school and passing a character and fitness test. Texas joins California and New York in passing such rules and the task force hopes that the changes make it easier for Texas companies involved in international business to hire experienced in-house counsel. The Order Adopting Amendments to the Rules Governing Admission to the State Bar of Texas can be viewed here:

<http://www.supreme.courts.state.tx.us/miscdocket/14/14.911300.pdf>

Did You Know?

As of June 26, 2014, the State Bar of Texas announced that members will have free access to Fastcase and Casemaker for legal research, making the State Bar the first in the country to offer access to both research services. Members previously had access to Casemaker, but along with the addition of Fastcase, members’ access to Casemaker was increased to include the premium services of Casecheck+, CiteCheck, and Casemaker Digest. The complete story can be found here:

<http://www.geeklawblog.com/2014/06/texas-state-bar-adds-fastcase-alongside.html>

Library Reminders

Attorney IOUs— The library has an uncollected balance of \$176.74 from attorney IOUs. This is a courtesy for those attorneys who do not have cash at the time the copies are made. If this balance remains uncollected, IOUs will be discontinued.

Book Return—The law library is not a lending library. Lending books to attorneys is a courtesy. Books **MUST** be returned by the due date.



WestlawNext Tips

How to Search Headnotes on WestlawNext

If the regular case search is not bringing the desired results, searching the headnotes is another option. Headnotes are written by attorney editors and give a brief summary of the case and its ruling.

From the home screen, select the option for Cases:

Texas

Search all Texas content above or navigate to specific content below.

Search all content Specify content to search

Cases

All Texas State & Federal Cases

[All Texas State Cases](#)

[Texas Supreme Court](#)

[Texas Court of Criminal Appeals](#)

[Texas Court of Appeals](#)

All Texas Federal Cases

[U.S. Supreme Court](#)

[Fifth Circuit Court of Appeals](#)

[Texas Federal District Court](#)

[Texas Bankruptcy Courts](#)

Next, select the “advanced” option to the right of the search bar:



The user may then type in the relevant search terms in the Headnotes field and then select “Search:”

The cases show the user’s search term in the Headnotes:

Select all items | No items selected

1. **Trevino v. Ortega**
Supreme Court of Texas. | June 05, 1998 | 969 S.W.2d 950 | 1998 WL 288721

TORTS - **Spoliation**. Texas does not recognize **spoliation** as a tort cause of action.

...304 k. In general. (Formerly 379k13 Texas does not recognize **spoliation** as a tort cause of action; **spoliation** does not give rise to independent damages, and is better remedied within the lawsuit affected by **spoliation**. Thomas F. Nye Diana L. Faust , Corpus Christi, Diana L...

Tech Tips: More Useful Apps and Law Blogs

- www.legalethicsforum.com—a website that is dedicated to breaking news and current cases regarding legal ethics.
- Loweringthebar.net— a legal humor website that highlights the more humorous side of law, recent cases and news stories.
- Overlawyered.com— claims to be the oldest legal blog and is continuously updated with stories and blogs that “chronicle the high cost of our legal system.”
- E-Transcript—a Thomson Reuters app that allows the user to import transcripts to a .ptx format that can highlighted and annotated.

Have a safe Labor Day



The Law Library

will be closed

on Monday,

September 1st

for Labor Day.

New on the Shelf:

- O'Connor's Family Code, 2014-2015
- O'Connor's Property Code, 2014-2015
- Texas Family Law Practice Law Manual, 2014
- Is It Admissible, 2014-2015
- O'Connor's Texas Civil Forms, 2014
- O'Connor's Texas Civil Appeals, 2014
- Federal Criminal Code and Rules, 2014 rev. ed.
- Navigating the Federal Trial, 2014
- The Methods of Attacking Scientific Evidence, 5th ed.
- Sexual Assault Trials, Volumes 1 and 2, 4th ed.
- Federal Jury Practice and Instructions: Criminal Companion handbook, Volumes 1 and 2, 2014
- Texas Legal Practice Forms, 2014

A Little Legal Humor

Stu's Views

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The worst part of my commute
is that I end up at work.