



Continuing the **CONVERSATION**

MOST OF YOU HAVE SEEN MY FACEBOOK POST FROM JULY 10, 2020, and my blog comment from 2015. Regardless of how you feel about them, one thing is certain: Racial injustice is a very important issue right now and it must be addressed.

I have listened intently to all viewpoints since my controversial post in July. I respect the sentiments of those who spoke out at the special board meeting regarding their opinions on my statements and a plan for change.

In summary, I listened and heard from all demographics, and I believe we should all spend more time engaging with one another in a supportive and understanding manner. If we have closed minds and refuse to listen, this problem will only grow worse.

Reflecting on my time at Gerry Spence's Trial Lawyers College, I learned if you are talking, you are not listening and if you are not listening, you are not learning. If you are not learning, you cannot make good decisions. As the president of the State Bar of Texas, I want to make strides to improve our ability to truly listen and grow.

I look forward to continuing the conversation and learning more as an organization. With continued education and perseverance, I believe the State Bar will continue to grow and serve Texans in an even better way. I take my role as president very seriously, and I will continue to lead this organization in the best way possible. I've learned from these issues, and I want my actions to speak louder than my words.

At the September 25 board meeting I will report back from my deliberations with others and lay out my preliminary plan for advancing these issues. I am seeking alliances and collaborations with regional and other similarly situated state bar associations, our state bar sections and committees, and our newly created president-elect's task force. I look forward to sharing more with you soon.

LARRY MCDOUGAL

President, 2020-2021
State Bar of Texas

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 20-9112

TWENTY-SIXTH EMERGENCY ORDER REGARDING THE COVID-19 STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order is issued pursuant to Section 22.0035(b) of the Texas Government Code.

2. Subject only to constitutional limitations, all courts in Texas may in any case, civil or criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public—without a participant’s consent:

a. except as provided in paragraph (b), modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than December 1, 2020;

b. in all proceedings under Subtitle E, Title 5 of the Family Code:

(i) extend the initial dismissal date as calculated under Section 263.401(a) only as provided by Section 263.401(b) or (b-1);

(ii) for any case previously retained on the court’s docket pursuant to Section 263.401(b) or (b-1), or for any case whose dismissal date was previously modified under an Emergency Order of this Court related to COVID-19, extend the dismissal for an additional period not to exceed 180 days from the date of this Order;

c. except as this Order provides otherwise, allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to a

party, attorney, witness, court reporter, grand juror, or petit juror—to participate remotely, such as by teleconferencing, videoconferencing, or other means;

d. consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;

e. conduct proceedings away from the court’s usual location with reasonable notice and access to the participants and the public;

f. require every participant in a proceeding to alert the court if the participant has, or knows of another participant who has: (i) COVID-19 or flu-like symptoms, or a fever, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, sore throat, loss of taste or smell, congestion or runny nose, nausea or vomiting, diarrhea; or (ii) recently been in close contact with a person who is confirmed to have COVID-19 or exhibiting the symptoms described above;

g. take any other reasonable action to avoid exposing court proceedings to the threat of COVID-19.

3. Courts must not conduct in-person proceedings contrary to the *Guidance for All Court Proceedings During COVID-19 Pandemic* (“Guidance”) issued by the Office of Court Administration, which may be updated from time to time, regarding social distancing, maximum group size, and other restrictions and precautions. Prior to holding any in-person proceedings, a court must submit an operating plan that is consistent with the requirements set forth in the Guidance. Courts must continue to use all reasonable efforts to conduct proceedings remotely.

4. Existing grand juries may meet remotely or in-person as long as adequate social distancing and other restrictions and precautions are taken to ensure the health and safety of court staff, parties, attorneys, jurors, and the public. Courts should consider extending the term of a grand jury under Section 24.0125 of the Texas Government Code and reassembling discharged grand juries under Article 19.41 of the Texas Code of Criminal Procedure.

5. A justice or municipal court must not hold an in-person jury proceeding, including jury selection or a jury trial, prior to December 1.

6. A district court, statutory or constitutional county court, or statutory probate court must not conduct an in-person jury proceeding unless:

a. the local administrative district judge for the county in which the court is located has, before the jury proceeding and after conferring with the judges in the county and the local public health authority, submitted a plan for conducting jury proceedings consistent with the Guidance issued by the Office of Court Administration for conducting jury proceedings;

b. to assist with coordination of local resources and to manage capacity issues, the court has obtained prior approval for that jury proceeding from the local administrative district judge and Regional Presiding Judge;

c. not more than five days before the jury proceeding, the local administrative district judge has consulted the local public health authority and verified that local health conditions and plan precautions are appropriate for the jury proceeding to proceed;

d. the court has considered on the record any objection or motion related to proceeding with the jury proceeding at least seven days before the jury proceeding or as soon as practicable if the objection or motion is made or filed within seven days of the jury proceeding; and

e. the court has established communication protocols to ensure that no court participants have tested positive for COVID-19 within the previous 30 days, currently have symptoms of COVID-19, or have had recent known exposure to COVID-19.

7. In criminal cases where confinement in jail or prison is a potential punishment, remote jury proceedings must not be conducted without appropriate waivers and consent obtained on the record from the defendant and prosecutor. In all other cases, including cases in justice and municipal courts, remote jury proceedings must not be conducted unless the court has complied with paragraph 6(d).

8. Except for non-binding proceedings, a court may not permit or require a petit juror to appear remotely unless the court ensures that all potential and selected petit jurors have access to technology to participate remotely.

9. The Office of Court Administration should issue detailed guidance to assist courts wishing to conduct remote jury proceedings and should offer, to the greatest degree possible, assistance to those courts in conducting the remote jury proceedings.

10. Pursuant to Sections 74.046 and 74.047 of the Texas Government Code, the Regional Presiding Judges are assigned the following duties:

a. ensure that all courts in each region are operating in full compliance with the Court's Orders and the Guidance issued by the Office of Court Administration;

b. ensure that all trial court judges in each region, including justices of the peace and municipal court judges, do not conduct in-person proceedings, including in-person jury proceedings, inconsistent with the Court's Orders and the latest Guidance issued by the Office of Court Administration;

c. report to the office of the Chief Justice of the Supreme Court any proceedings that are being conducted in the regions—and the court in which the proceedings are being conducted—that are inconsistent with the Court's Orders and the Guidance issued by the Office of Court Administration; and

d. assist each region's local governments and courts to ensure that courts have the ability to conduct court business.

11. The Office of Court Administration should coordinate with the Regional Presiding Judges to monitor jury and other court proceedings in Texas and the Texas Department of State Health Services regarding the public health situation in Texas and its regions. The Office of Court Administration should adjust its Guidance and make recommendations to the Court as necessary to ensure the health of court staff, parties, attorney, jurors, and the public.

12. In determining a person's right to possession of and access to a child under a court-ordered possession schedule in a Suit Affecting the Parent-Child Relationship, the existing trial court order shall control in all instances. Possession of and access to a child shall not be affected by any shelter-in-place order or other order restricting movement issued by a governmental entity that arises from the pandemic. The original published school schedule shall also control, and possession and access shall not be affected by the school's closure that arises from the pandemic. Nothing herein prevents parties from altering a possession schedule by agreement if allowed by their court order(s), or courts from modifying their orders on an emergency basis or otherwise.

13. An evidentiary panel in an attorney professional disciplinary or disability proceeding may—and must to avoid risk to panel members, parties, attorneys, and the public—without a participant's consent:

a. conduct the proceeding remotely, such as by teleconferencing, videoconferencing, or other means;

b. allow or require anyone involved in the proceeding—including but not

limited to a party, attorney, witness, court reporter—to participate remotely, such as by teleconferencing, videoconferencing, or other means; and

c. consider as evidence sworn statements or sworn testimony given remotely, such as by teleconferencing, videoconferencing, or other means.

14. This Order is effective October 1, 2020 and expires December 1, 2020, except as otherwise stated herein, unless extended by the Chief Justice of the Supreme Court.

15. The Clerk of the Supreme Court is directed to:

a. post a copy of this Order on www.txcourts.gov;

b. file a copy of this Order with the Secretary of State; and

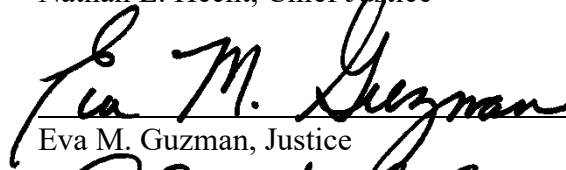
c. send a copy of this Order to the Governor, the Attorney General, and each member of the Legislature.

16. The State Bar of Texas is directed to take all reasonable steps to notify members of the Texas bar of this Order.

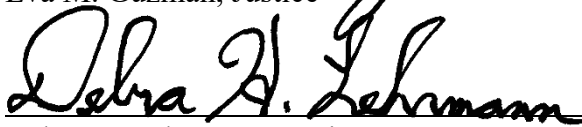
Dated: September 18, 2020



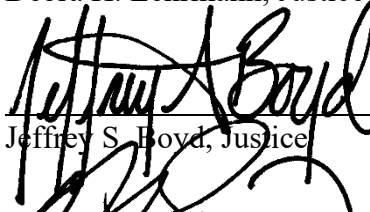
Nathan L. Hecht, Chief Justice



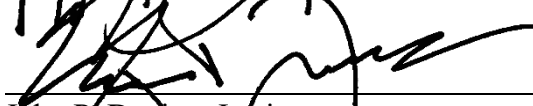
Eva M. Guzman, Justice



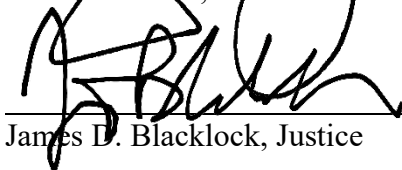
Debra H. Lehrmann, Justice



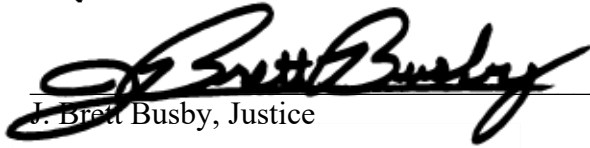
Jeffrey S. Boyd, Justice



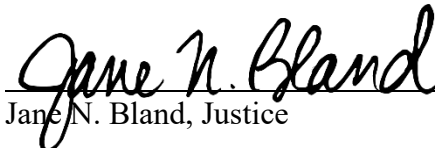
John F. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

TASK FORCE ON PUBLIC PROTECTION, GRIEVANCE REVIEW, AND THE CLIENT SECURITY FUND

	Last Name	First Name	Title	Firm	Organization	City
1	Fields	Hon. Michael	Chair	Law offices of Michael Fields	Retired Judge sitting at Harris County Criminal Court 16, Private Practitioner	Houston
2	Ambriz	Xochitl	Member	Law Office of Xochitl A. Ambriz	Private Practitioner	El Paso
3	Bennett	Robert	Member	Bob Bennett and Associates P.C.		Houston
4	Bull	Hon. Diane	Member		Retired Judge, Texas Association of Speciality Courts & National Association of Drug Court Professionals	Houston
5	Bunn	Gena	Member	Gena Bunn, P.L.L.C.	Chair of Commission for Lawyer Discipline	Longview
6	Carter	Thomas	Member	Law Office of Thomas D. Carter, IV		El Paso
7	Fantus	Dr. Sophia	Member	The University of Texas-Arling School of Social Work	Associate Professor	Arlington
8	Forbes	Lucy	Member	The Forbes Firm, PLLC	State Bar Director, District 4, Place 4	Houston
9	Garcia	Marco	Member	Judson ISD	Assistant Superintendent of Human Resources	Converse
10	Goldsberry	Shari	Member	Goldsberry & Associates, PLLC	State Bar Director, District 5	Texas City
11	Johnson	Lydia	Member	Thurgood Marshall School of Law /CRIMINAL DEFENSE CLINIC		Houston
12	Mendoza	Diane	Member	Guadalupe O. Mendoza, Atty	Family Law, Mexican American Bar Association Houston, Texas Trial Lawyers Association, American Association of the Notaries and the Harris County Criminal Lawyers Association	Kingsville
13	Muldrow	Loretta	Member	Loretta Johnson Muldrow Attorney at Law		Houston
14	Naylor	Stephen	Member	Naylor & Naylor PLLC	State Bar Director, District 7, Place 1	Fort Worth
15	Norman	Adrienne	Member	Fort Bend County District Attorney	Association, Criminal and Juvenile Division	Richmond
16	Peale	Clipper	Member	Lalon C. Peale Attorney & Counselor	Criminal Law Section & Texas Criminal Defense Lawyers Association	Dallas
17	Ramos	Rick	Member	The Ramos & Torres Law Firm, PLLC	Family and Criminal Justice Sections, Texas Criminal Defense Lawyers Association, the DUI Lawyers Association & the San Antonio & Maverick County Bar Associations	San Antonio
18	Rowe	Brett	Member	Evans, Rowe & Holbrook	Texas Association of Defense Counsel and Defense Research Institute	San Antonio
19	Vital	Victor	Member	Barnes & Thornburg LLP		Dallas

20	McDougal	Larry	Member	Law Office of Larry P. McDougal	State Bar President	Richmond
21	Apffel	Trey	Liaison	State Bar of Texas	State Bar Executive Director	Austin

State Bar of Texas**Task Force on Public Protection, Grievance Review, and the Client Security Fund****Fiscal Impact Analysis****September 25, 2020****BACKGROUND**

The Texas disciplinary system is governed by rules promulgated by the Supreme Court of Texas, with the oversight of the Commission for Lawyer Discipline and Grievance Oversight Committee and the administrative support and participation of the State Bar Board of Directors. The President's task force will make recommendations regarding the system and its processes.

MISSION

The purpose of this Task Force is to study the grievance process and the Office of Chief Disciplinary Counsel with the mind-set of ensuring the grievance process remains fair to the lawyer members of the State Bar of Texas while at the same time ensuring that the public is protected from lawyers who may take advantage of them. At the end of this process, the Task Force will make recommendations to the Board of Directors regarding any changes in procedures and rules the Task Force believes are necessary to protect both the attorneys of Texas and the public which they serve.

The Task Force will also study the Client Security Fund to determine ways in which it can better serve the public while considering the limited resources available to it.

MEMBERS

- See attached roster.

CONSIDERATIONS

1. The work group is planned to consist of 21 members.
2. The members will be from across the state.
3. All meetings of the work group will be conducted by Zoom or similar video conferencing.
4. There will be no in-person meetings eliminating the cost for travel, meals, and lodging.
5. The task force will start work immediately after board approval and will continue until its work is no longer needed or June 30, 2021, whichever comes first.

FISCAL IMPACT FY2020-21

Upon consultation with Tracy Jarratt, Finance Division Director, the fiscal impact of this task force is estimated to be \$2,500.00. The creation of this workgroup is not anticipated to have a significant fiscal implications to the State Bar's FY 2020-21 general fund budget.

COURTHOUSE ACCESS BADGE WORKGROUP

	Last Name	First Name	Title	Firm	Organization	City
1	Sergi	David	Chair	Sergi and Associates P.C.	State Bar Director, District 15	San Marcos
2	Castillo	Guadalupe	Member	Zaffirini and Castillo	Lawyer	Laredo
3	Foster	Stephen	Member	Law Office of Stephen M. Foster	Lawyer	Austin
4	Hill	Hon. Josh	Member	232nd District Court	Judge	Houston
5	Medary	Hon. Mary	Member	347th Judicial District Court Judge. 5th Region Presiding Judge	Judge	Corpus Christi
6	Miller	Carra	Member	Welder Leshin LLP	State Bar Director, District 11	Corpus Christi
7	Miller	Emily	Member	Emily Miller, Attorney & Mediator, P.C.	State Bar Director, Section Representative	Brownwood
8	Montford	Mindy	Member	Travis County District Attorney's Office	Lawyer	Austin
9	Moorehead	Hon. Audrey	Member	Dallas County Criminal Court #3	Judge	Dallas
10	Parsons	James	Member	Law Office of James Parson	Former Staff Attorney	Austin
11	Vanover	Hon. Charles	Member	Tarrant County Criminal Court 8	Judge	Fort Worth
12	Tisdale	Cindy	Member	Law Office of Cindy V. Tisdale, P.L.L.C.	Former Chair of Family Law	Granbury
13	McDougal	Larry	Member	Law Office of Larry P. McDougal	State Bar President	Richmond
14	Laney	KaLyn	Liaison	State Bar of Texas	State Bar Staff	Austin

**State Bar of Texas
Courthouse Access Badge Workgroup
Fiscal Impact Analysis
September 25, 2020**

BACKGROUND

In 2018, President-Elect Randy Sorrels created a Courthouse Access Badge Task Force to study the implementation of courthouse access badges in Texas. This workgroup will follow up on and continue those efforts.

MISSION

To study the feasibility of statewide courthouse access badges for attorneys licensed in the State of Texas. Once this study has been completed the Chair will report to the State Bar Board of Directors with the workgroup's findings and recommendations.

MEMBERS

- See attached roster.

CONSIDERATIONS

1. The work group is planned to consist of 14 members.
2. The members will be from across the state.
3. All meetings of the work group will be conducted by Zoom or similar video conferencing.
4. There will be no in-person meetings eliminating the cost for travel, meals, and lodging.
5. The workgroup will start work immediately after board approval and will continue until its work is no longer needed or June 30, 2021, whichever comes first.

FISCAL IMPACT FY2020-21

Upon consultation with Tracy Jarratt, Finance Division Director, the fiscal impact of this workgroup is estimated to be \$2,500.00. The creation of this workgroup is not anticipated to have a significant fiscal implications to the State Bar's FY 2020-21 general fund budget.



September 4, 2020

Ad Hoc Submission Committee

c/o Trey Apffel
Executive Director
State Bar of Texas

c/o John Sirman
Associate Executive Director and Legal Counsel
State Bar of Texas
John.sirman@texasbar.com

Re: Emergency Action Requested Regarding No. 19-0673 in the Supreme Court of Texas;
HouseCanary, Inc. f/k/a Canary Analytics, Inc. v. Title Source, Inc., The Reporters Committee for Freedom of the Press and the Houston Forward Times

To the Members of the Ad Hoc Submission Committee:

Per section 8.08.02 of the State Bar Policy Manual (June 2020), please allow this letter to serve as the request of the Business Law Section to file the attached amicus curiae brief in the above-referenced matter.

My contact information is as follows:

Irene Kosturakis
Former Chair
Business Law Section
c/o 2114 Park St.
Houston, TX 77019
Irene_kosturakis@bmc.com
713-918-2233 Telephone

Background, issue presented, and summary of the argument of the amicus curiae brief

By filing this amicus brief, the Business Law Section hopes to ensure that the promise of the Texas Uniform Trade Secrets Act (TUTSA) to modernize Texas law on misappropriation of trade secrets is realized. Joseph F. Cleveland, Jr. of Bracket & Ellis, P.C., Herbert Hammond, of Thompson & Knight LLP,

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and I through, the Texas Business Law Foundation, were involved in supporting the enactment of TUTSA and its subsequent amendment. This law, among other things, provides a simple and effective method for sealing court records, which is necessary for the protection of a litigant's trade secrets because once publicly disclosed, a trade secret is lost. TUTSA is an important law for any Texas business that owns trade secrets. TUTSA protects a business's trade secrets, often their most valuable asset, from disclosure during trial. The decision by the San Antonio Court of Appeals makes that important feature less clear. The issue before the Supreme Court of Texas is whether the trial court abused its discretion by entering the post-trial sealing order under Rule 76a of the Texas Rules of Civil Procedure. The amicus brief argues that TUTSA requires that the trial court take reasonable measures to protect alleged trade secrets *at any stage of the litigation* and that entering a sealing order is presumed to be a reasonable measure under TUTSA. TEX. CIV. PRAC. & REM. CODE §134A.006(a)-(b). Thus, even if it is true that the Petitioner violated the prior stipulated protective order, TUTSA mandates that the trial court continue to take reasonable measures to preserve alleged trade secrets at any stage of the litigation.

The amicus brief further argues that should the Texas Supreme Court fail to reverse the decision below, one of TUTSA's unique provisions specifically crafted by the Legislature to ensure trade secrets remain trade secrets through all stages of litigation will transform from a feature into a flaw. The Legislature sought to address the specific problems Rule 76a posed to litigants in trade secret cases and specifically intended that TUTSA displace "the cumbersome procedures outlined in [Rule] 76a, which requires public notice and the public's opportunity to be heard." Joseph F. Cleveland, Jr. & Heath Coffman, *The Texas Uniform Trade Secrets Act*, 45 TEX. J. BUS. L. 323, 329 (2013). It is argued that by including this uniquely Texas Provision as part of the Legislature's adoption of TUTSA, the Legislature provided "the ability for aggrieved parties to pursue their legal rights in court without fear of having to disclose the very information they are trying to keep secret." *Id.*

Compliance with the State Bar Policy Manual

The amicus curiae brief fully complies with the State Bar Policy Manual (Manual). It is in accordance with Rule 8.02.02 of the Manual in that it falls within the stated purposes of the State Bar as provided in the State Bar Act, does not suggest a violation of any state or federal law or any applicable case law, does not carry the potential of deep philosophical or emotional division among a substantial segment of the membership of the State Bar, cannot be construed as conflicting with any existing State Bar policy, and falls within the primary and special expertise, purpose, or concern of the Business Law Section.

The brief addresses procedural law on a major issue of importance to the practice of business law and the administration of justice in Texas. It does not purport to resolve or take a position with regard to factual disputes in the case. The brief includes the State Bar Rule 8.02.05(A) Section Statement. A majority of the Council of the Business Law Section voted in favor of filing this brief (8 in favor and 4 abstentions). No Council member represents a party in the above-referenced case.

The Business Law Section was not solicited to provide amicus support. Joe Cleveland and Herb Hammond prepared the brief pro bono with the assistance of Kevin Smith, J. Heath Coffman, Tim Hudson, Kelly Hine, and me. No lawyers who or law firms that prepared the brief are personally involved or represent any party in the case, and no fee was paid in connection with the preparation of the brief.

Timing

Because the appellate briefing is complete and oral argument is scheduled for October 27, 2020, the Business Law Section requests emergency action to approve this request so that the amicus brief can be filed by September 8, 2020. We believe this deadline will allow the Court sufficient time to consider it. Without a timely filing, the appeal may be determined without input from the Section.

Business Law Section's Interest

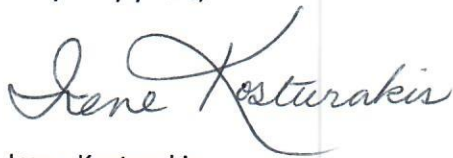
The Business Law Section was at the forefront of realizing that trade secret law was woefully behind the times and assisted in drafting the TUTSA and subsequent amendment. As a result of the collaboration of the Business Law Section with the Intellectual Property Law Section, Texas became the 47th state to enact the Uniform Trade Secrets Act. The effort was driven by the Texas Business Law Foundation. Therefore, the Business Law Section has a primary concern that TUTSA be properly interpreted as the Texas Legislature intended.

I understand that the next meeting of the Board of Directors of the State Bar of Texas is September 25, 2020.

The Business Law Section therefore requests emergency action by the Ad Hoc Submission Committee to approve the filing of the attached brief under section 8.02.04(C) of the Manual. In accordance with section 8.02.04(C), the Business Law Section also requests the necessary waiver of the thirty-day request requirements to allow the Ad Hoc Submission Committee to consider approval of the filing of the amicus curiae brief in the above-referenced case on an expedited basis before September 8, 2020.

I appreciate your assistance in this regard. Please contact me at irene_kosturakis@bmc.com at 713-918-2233 or jcleveland@belaw.com and 817-907-5582 if there is any question.

Very truly yours,



Irene Kosturakis
Former Chair of the
Business Law Section

Business Law Section of the State Bar of Texas
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No. 19–0673

IN THE SUPREME COURT OF TEXAS

HOUSECANARY, INC. F/K/A CANARY ANALYTICS, INC.,
Petitioner,

v.

TITLE SOURCE, INC., THE REPORTERS COMMITTEE FOR FREEDOM
OF THE PRESS AND THE HOUSTON FORWARD TIMES,
Respondents.

On Review from the Fourth Court of Appeals,
No. 04-18-00509-CV and No. 04-18-00844-CV

AMICUS CURIAE BRIEF OF THE
BUSINESS LAW SECTION OF THE STATE BAR OF TEXAS

IN SUPPORT OF
HOUSECANARY, INC. F/K/A CANARY ANALYTICS, INC.

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Counsel for Amicus Curiae

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Business Law Section of the State Bar of Texas (Business Law Section) has a significant interest in seeing that the Texas Uniform Trade Secret Act is properly and uniformly interpreted by Texas courts.

The Business Law Section supports Petitioner's position that TUTSA displaces the burdensome procedure in Rule 76a of the Texas Rules of Civil Procedure, which requires public notice and an opportunity to be heard before evidence in a trade-secrets case can be sealed.

The Business Law Section is a standing section of the State Bar of Texas with over 3,800 members. The purpose of the Business Law Section is to "promote the objects of the State Bar of Texas within the field of business law." Business Law Section Bylaws, Art. 1, § 2. The Business Law Section provides resources in the fields of corporate, securities, commercial, banking, and bankruptcy law for attorneys in the State of Texas.

In 2013, the Business Law Section and the Intellectual Property Law Section (IP Section) formed a working group consisting of over thirty lawyers to draft proposed legislation to adopt the Uniform Trade Secrets Act. The working group was led by Joseph F. Cleveland, Jr., then Chair

of the Trade Secrets Committee of the IP Section, and Irene Kosturakis, a member of the executive leadership team of the Business Law Section. The working group surveyed trade secret law in all fifty states and drafted proposed legislation and bill analyses used to explain the bill's provisions to the Texas Legislature. Several members of the working group worked with the bill's sponsors in the Legislature and testified before Senate and House Committees in favor of the proposed legislation. The Texas Uniform Trade Secrets Act (TUTSA) was passed by the House and Senate in the Regular Session of the 83rd Legislature and was signed into law by Governor Rick Perry.

As Chair of the Trade Secrets Committee, Mr. Cleveland also worked with Justice J. Brett Busby, then Chair of the Committee on Pattern Jury Charges, along with members of the Trade Secret Committee and Business Law Section to help craft the Texas Pattern Jury Charges for Misappropriation of Trade Secrets published in the Texas Pattern Jury Charges in 2016.

In 2017, the working group was re-constituted under the leadership of J. Heath Coffman, Chair of the Trade Secrets Committee, to consider proposed amendments to TUTSA. The working group drafted the

proposed amendments as well as the bill analyses. Several members of the working group worked with the bill's sponsors in the Legislature and testified before the Senate and House Committees in favor of the proposed amendments to TUTSA. The amendments were passed by the House and Senate in the Regular Session of the 85th legislature and were signed into law by Governor Greg Abbott.

Based on this history, the Business Law Section has a deep understanding of TUTSA and a strong interest in seeing that TUTSA is properly and consistently interpreted in the manner the Texas Legislature intended.

In accordance with Section 8.02.02 of the State Bar Policy Manual (June 2020), this amicus curiae brief falls within the stated purposes of the State Bar as provided in the State Bar Act, does not suggest the violation of any state or federal law or any applicable case law, does not carry the potential of deep philosophical or emotional division among a substantial segment of the membership of the State Bar, cannot be construed as conflicting with any existing State Bar policy, and falls within the primary and special expertise, purpose, or concern of the Sections. The brief addresses only procedural law on a major issue of

importance to the practice of intellectual property and business law and the administration of justice in Texas. It does not purport to resolve or take a position with regard to factual disputes in the case.

No lawyers or law firms that prepared this brief are personally involved or represent any party in this proceeding.

No fee was paid in connection with the preparation of this brief.

STATE BAR RULE 8.02.05(A) SECTION STATEMENT

THIS AMICUS BRIEF IS BEING PRESENTED ONLY ON BEHALF OF BUSINESS LAW SECTION OF THE STATE BAR. THE SECTION'S POSITION SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE, OR THE GENERAL MEMBERSHIP OF THE STATE BAR. THE BUSINESS LAW SECTION IS A VOLUNTARY SECTION OF OVER 3,800 MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

THIS AMICUS BRIEF IS SUBMITTED AS A RESULT OF A VOTE OF 8 TO 0 WITH FOUR ABSECTIONS OF THE COUNCIL OF THE BUSINESS LAW SECTION, WHICH IS THE GOVERNING BODY OF THIS SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THIS SECTION HAS BEEN OBTAINED.

SUMMARY OF THE ARGUMENT

Before the Texas Legislature enacted the Texas Uniform Trade Secrets Act (TUTSA), Texas had no statutory law governing trade secrets. [Joseph F. Cleveland Jr. & J. Heath Coffman, *Protecting Trade Secrets Made Simple: How the Recently Enacted Texas Uniform Trade Secrets Act Provides a Legislative Framework for Litigating Cases*, 76 TEX. B. J. 752, 752 \(2013\).](#) Instead, Texas courts relied upon various authorities “from Texas common law, the Restatement of Torts, the Restatement (Third) of Unfair Competition, and the Texas Theft Liability Act.” *Id.* Because this outdated trade-secret regime was not designed for the technological developments of the modern era, businesses both inside and outside Texas were left to guess what proprietary information Texas law would and would not protect in trade-secret cases. *Id.*

In 2013, the Legislature enacted TUTSA to codify and modernize Texas law on misappropriation of trade secrets. *Id.* TUTSA now affords all litigants a simple legislative framework for litigating trade-secret cases by establishing, among other things, an unambiguous and modern definition of trade secrets, a simplified means for obtaining injunctive relief, a provision for recovering attorney’s fees from parties who engaged

in willful and malicious activity, and a simple and effective method for sealing court records. *Id.*

The issue before this Court is whether the trial court abused its discretion by entering a post-trial sealing order pursuant to TUTSA instead of under Rule 76a of the Texas Rules of Civil Procedure. TUTSA makes clear that the trial court must take reasonable measures to protect alleged trade secrets at any stage of the litigation and that entering a sealing order is presumed to be a reasonable measure. TEX. CIV. PRAC. & REM. CODE § 134A.006(a)–(b). Thus, even if it is true that Petitioner violated the prior stipulated protective order, TUTSA mandates that the trial court continue to take reasonable measures to preserve alleged trade secrets at any stage of the litigation.

Should this Court fail to reverse the decision below, one of TUTSA's unique provisions crafted by the Legislature to ensure trade secrets *remain* trade secrets through all stages of litigation will transform from a feature into a flaw. Indeed, the Legislature sought to address the precise problems Rule 76a posed to litigants in trade-secret cases and specifically intended that TUTSA displace “the cumbersome procedures outlined in [Rule] 76a, which requires public notice and the public's

opportunity to be heard.” [Joseph F. Cleveland, Jr. & J. Heath Coffman, *The Texas Uniform Trade Secrets Act*, 45 TEX. J. BUS. L. 323, 329 \(2013\).](#)

By including this uniquely Texas provision as part of the Legislature’s adoption of the Uniform Trade Secrets Act, the Legislature provided “the ability for aggrieved parties to pursue their legal rights in court without fear of having to disclose the very information they are trying to keep secret.” *Id.*

ARGUMENT

I. Rule 76a was promulgated to inspire confidence in the judicial system—not destroy trade secrets.

In 1990, this Court adopted Rule 76a in response to a legislative directive.¹ *Gen. Tire, Inc. v. Kepple*, 970 S.W.2d 520, 523 (Tex. 1998). “In 1989, the legislature mandated that the Texas Supreme Court develop guidelines for courts to use in deciding whether to seal civil records.” Robert C. Nissen, *Open Court Records in Products Liability Litigation Under Texas Rule 76a*, 72 TEX. L. REV. 931, 935 (1994). The driving force behind the Legislative mandate were proponents of open court records who believed that “[c]oncealing information when its release would enhance government accountability or avert danger to health and safety sacrifices the public interest and jeopardizes confidence in the judicial system.” Lloyd Doggett & Michael J. Mucchetti, *Public Access to Public Courts: Discouraging Secrecy in the Public Interest*, 69 TEX. L. REV. 643, 644 (1991); *see also* Robert C. Nissen, *Open Court Records in Products Liability Litigation Under Texas Rule 76a*, 72 TEX. L. REV. 931, 951 (1994)

¹ Section 22.010 of the Government Code provides: “The supreme court shall adopt rules establishing guidelines for the courts of this state to use in determining whether in the interest of justice the records in a civil case, including settlements, should be sealed.” TEX. GOV’T CODE § 22.010.

(“Proponents of open court records generally promise three benefits: safer products, reduction in total litigation costs, and less secrecy in the judicial system.” (citations omitted)). Critics and commentators argued that “confidentiality and sealing orders produce a closed circle that can exclude other victims and potential victims, as well as the larger public, which has a critical interest in the proper functioning of public justice.” Lloyd Doggett & Michael J. Mucchetti, *Public Access to Public Courts: Discouraging Secrecy in the Public Interest*, 69 TEX. L. REV. 643, 645 (1991) (internal quotations and citations omitted). To “break this closed circle,” according to Justice Doggett, the Court adopted Rule 76a after a contentious rulemaking process that “devot[ed] more time to debating [Rule 76a] than to all of the other proposed rule changes combined.” *Id.* at 646–47.

Rule 76a “creates a presumption that all court records are open to the public and allows trial courts to seal court records” *Gen. Tire*, 970 S.W.2d at 523. A trial court can seal court records only upon a showing of all of the following:

(a) a specific, serious and substantial interest which clearly outweighs:

- (1) this presumption of openness;
- (2) any probable adverse effect that sealing will have upon the general public health or safety;
- (b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

TEX. R. CIV. P. 76a(1).

To seal a court record, the court must hold a public hearing. TEX. R. CIV. P. 76a(1). The party seeking a sealing order must post public notice of the hearing “at the place where notices for meetings of county governmental bodies are required to be posted.” TEX. R. CIV. P. 76a(3). And the hearing must be held not less than fourteen days after the motion is filed and the notice is posted. TEX. R. CIV. P. 76a(4). The notice must state the time and place of the hearing and must contain a specific description of the nature of the case and the records sought to be sealed. TEX. R. CIV. P. 76a(3). Any person has a right to intervene and an opportunity to be heard. TEX. R. CIV. P. 76a(7).

Subject to certain limited exceptions, “court records” include “all documents of any nature filed in connection with any matter before any civil court.” TEX. R. CIV. P. 76a(2)(a). The term “court records” extends to “discovery, not filed of record, concerning matters that have a probable

adverse effect upon the general public health or safety, or the administration of public office, or the operation of government” TEX. R. CIV. P. 76a(2)(c). Rule 76a, however, specifically excludes from the term “court record” any “discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.” *Id.*

After becoming “the first state to adopt such a comprehensive” rule on the “leading edge of a much broader movement to improve access and ensure greater openness in the judicial process,” Justice Doggett predicted that implementing Rule 76a would nevertheless “involve some difficulties and ultimately require further refinement of its provisions.” Lloyd Doggett & Michael J. Mucchetti, *Public Access to Public Courts: Discouraging Secrecy in the Public Interest*, 69 TEX. L. REV. 643, 684–85 (1991).

II. Rule 76a created a Texas-sized problem that required a Texas-based solution.

“A controversial aspect of . . . Rule 76a was its application to unfiled discovery. . . .” Herbert J. Hammond, *Texas Uniform Trade Secrets Act*, 27TH ANN. ADVANCED INTELL. PROP. L. COURSE (State Bar of Tex.), March 2014, at 16 n.192; see also *Gen. Tire*, 970 S.W.2d at 523 (“Th[e] application [of Rule 76a] to unfiled discovery is one of the rule’s most

controversial aspects.”); Jennifer S. Sickler & Michael F. Heim, *The Impact of Rule 76a: Trade Secrets Crash and Burn in Texas*, 1 TEX. INTELL. PROP. L. J. 95, 97 (1993) (“Another significant problem with Rule 76a is that it makes all discovery, both filed and unfiled, ‘court records[,]’ subject to a few exceptions.”).

Particularly controversial was the exception to the presumption of openness for unfiled discovery in cases “originally initiated to preserve bona fide trade secrets or other intangible property rights.” TEX. R. CIV. P. 76a(2)(c). Justice Doggett explained that this exception was included because “[a] genuine trade secret is certainly the type of ‘specific, serious and substantial interest’ that should be considered in the balancing process mandated by paragraph 1 of Rule 76a.” Lloyd Doggett & Michael J. Mucchetti, *Public Access to Public Courts: Discouraging Secrecy in the Public Interest*, 69 TEX. L. REV. 643, 673–74 (1991). But whether something is a trade secret is often a critical issue—if not *the* critical fact issue—in a trade-secret misappropriation case. Thus, the exception intended to protect a party’s trade secrets created little more than a Sisyphean task. In order to establish the existence of its trade secrets, a party risked not being able to secure a court’s protection from public

disclosure of the very evidence necessary for a factfinder to establish its trade secrets. *See Eli Lilly & Co. v. Marshall*, 829 S.W.2d 157, 158 (Tex. 1992) (per curiam) (“[A] *properly proven* trade secret is an interest that should be considered in making the determination required by Rule 76a. If the trial court determines the documents are ‘court records’ within the meaning of the rule, it must decide whether any specific, serious, and substantial interest, including a trade secret interest, has been *established* that justifies restricting access to the documents in question.” (emphasis added)). In other words, applying the exception often put at risk of public disclosure the very trade secrets a party sought to protect.

Rule 76a posed additional problems for parties attempting to protect their trade secrets while seeking recovery against those who allegedly misappropriated them. A “bona fide” trade secret is undefined by Rule 76a. Jennifer S. Sickler & Michael F. Heim, *The Impact of Rule 76a: Trade Secrets Crash and Burn in Texas*, 1 TEX. INTELL. PROP. L. J. 95, 96–97 (1993). And a defendant was incentivized to question whether a plaintiff initiated a “bona fide” trade-secret misappropriation claim “to avoid an implied admission that it has been sued over trade secrets that

are protectible.” *Id.* at 97–98. Consequently, this provision led to gamesmanship and delay.

Additionally, trade-secret litigation often involves numerous filings of trade-secret information with the court. Among other things, litigants may be required to submit trade-secret information in applications for temporary restraining orders, preliminary injunctions, motions to compel, motions for protective order, motions for summary judgment, and at trial. Thus, compliance with Rule 76a involved an extremely burdensome process because a party was required to seek protection each time it intended to file documents that included trade-secret information. *See id.* (“[C]ompelling courts to hold open hearings and to make written findings before they can seal court records is time-consuming for the judiciary and costly to litigants.”).

In sum, prior to the Legislature’s enactment of TUTSA, litigants faced loss of their trade secrets through public disclosure when attempting to preserve them, protracted discovery battles, and costly and cumbersome procedures necessary to seal court records containing trade-secret information. *See id.*

III. Resolving Rule 76a’s problems in trade-secret cases was part of what put the “T” in TUTSA.

“With its clear definition of trade secrets, a simplified means for injunctive relief and sealing court records, and an attorneys’ fees provision for recovering fees from those parties who engage in willful and malicious activity, the [Uniform Trade Secrets Act (UTSA)] provides a simple, clear, and predictable way of enforcing trade secret rights.” Irene Kosturakis, *Uniform Trade Secrets Act*, TEX. BUS. L. SEC. NEWSL. (Sept. 2013). Accordingly, commencing in 1981, states began enacting various versions of the UTSA.²

With the Texas Legislature’s adoption of TUTSA in 2013, “Texas was one of the last states to adopt a version of the UTSA.” Michelle Evans, *Determining What Constitutes a Trade Secret Under the New Texas Uniform Trade Secrets Act (TUTSA)*, 46 TEX. TECH. L. REV. 469, 470 (2014) (citations omitted). Before its enactment, Texas relied on several different areas of the law “to address the legal issues surrounding trade secret litigation.” S. Comm. on State Affairs, Bill Analysis, Tex. C.S.S.B. 953, 83rd Leg. RS at 1 (July 11, 2013). Consequently, “Texas

² See TRADE SECRETS ACT, <https://www.uniformlaws.org/committees/community-home?CommunityKey=3a2538fb-e030-4e2d-a9e2-90373dc05792> (last visited Aug. 17, 2020).

law [wa]s not as harmonious as the framework provided by the UTSA.”

Id. To bring Texas in line with the majority of other states, a Texas version of UTSA aimed at “providing a simple legislative framework for litigating trade secret issues in Texas” was proposed during the 2013 legislative session. House Comm. on Tech., Bill Analysis, Tex. S.B. 953, 83rd Leg., R.S. at 1 (2013). That framework would provide:

consistent and predictable statutory language for trade secret protection, update[] the definition of “trade secret” to reflect current business practices and technologies, and clarify[y] that certain business practices do not constitute misappropriation of trade secrets. S.B. 953 also provides easily applied standards for injunctive relief and offers an avenue for recovering attorney’s fees against willful and malicious misappropriators of trade secrets, which is currently done through the Texas Theft Liability Act. S.B. 953 updates Texas law to represent modern governance of trade secrets around the country.

S. Comm. on State Affairs, Bill Analysis, Tex. C.S.S.B. 953, 83rd Leg. RS (July 11, 2013); *see generally* Herbert J. Hammond, *Texas Uniform Trade Secrets Act*, 27TH ANN. ADVANCED INTELL. PROP. L. COURSE (State Bar of Tex.), March 2014, at 1–15; TEX. CIV. PRAC. & REM. CODE §§ 134A.002–.008.

Critically, the Legislature sought to address the specific problems created in trade-secret cases by the application of Rule 76a and expressly

intended that TUTSA displace the “the cumbersome procedures outlined in [Rule] 76(a), which requires public notice and the public’s opportunity to be heard.” Joseph F. Cleveland, Jr. & J. Heath Coffman, *The Texas Uniform Trade Secrets Act*, 45 TEX. J. BUS. L. 323, 329 (2013). By enacting TUTSA, the Legislature provided “the ability for aggrieved parties to pursue their legal rights in court without fear of having to disclose the very information they are trying to keep secret.” *Id.* This legislative purpose would be accomplished by requiring:

the court to preserve the secrecy of an alleged trade secret by reasonable means and specif[ying] that there is a presumption in favor of granting protective orders to preserve the secrecy of trade secrets. The bill authorizes protective orders to include provisions limiting access to confidential information to only the attorneys and their experts, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

House Comm. on Tech., Bill Analysis, Tex. S.B. 953, 83rd Leg., R.S. at 2 (2013). Moreover, to ensure that any conflict between TUTSA’s provisions and the Texas Rules of Civil Procedure would be resolved in favor of TUTSA, the proposed legislation “clarifie[d] that, to the extent that its provisions conflict with the Texas Rules of Civil Procedure, the bill’s provisions control.” *Id.*

After passing in the Texas House and Senate, and being signed into law by Governor Perry, TUTSA went into effect on September 1, 2013. To preserve a party's trade secrets at any stage of an action, TUTSA provides:

(a) In an action under this chapter, a court *shall* preserve the secrecy of an alleged trade secret by reasonable means. There is a *presumption in favor of granting protective orders* to preserve the secrecy of trade secrets. Protective orders may include provisions limiting access to confidential information to only the attorneys and their experts, holding in camera hearings, *sealing the records of the action*, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

(b) In an action under this chapter, a presumption exists that a party is allowed to participate and assist counsel in the presentation of the party's case. *At any stage of the action*, the court may exclude a party and the party's representative or limit a party's access to the alleged trade secret of another party if other countervailing interests overcome the presumption.

TEX. CIV. PRAC. & REM. CODE § 134A.006(a)–(b) (emphasis added).

Additionally, TUTSA provides:

To the extent that this chapter *conflicts* with the Texas Rules of Civil Procedure, *this chapter controls*. Notwithstanding Section 22.004, Government Code, the supreme court may not amend or adopt rules in conflict with this chapter.

TEX. CIV. PRAC. & REM. CODE § 134A.007(c) (emphasis added).

Rule 76a is not expressly referenced under TUTSA, but the statute's plain language and legislative history made the Legislature's intent crystal clear. The Legislature recognized that although Texas Rule of Evidence 507 provides that trade-secret information is privileged and need not be disclosed absent protective measures imposed by the court, until the enactment of TUTSA, there was no specific provision in Texas law for protecting the secrecy of a trade secret during court proceedings except Rule 76a. Joseph F. Cleveland Jr. & J. Heath Coffman, *Protecting Trade Secrets Made Simple: How the Recently Enacted Texas Uniform Trade Secrets Act Provides a Legislative Framework for Litigating Cases*, 76 TEX. B. J. 752, 755 (2013). "Instead, parties ordinarily requested the court to enter a protective order under general discovery rules. Parties would also seek to seal court records using the cumbersome procedures outlined in Texas Rule of Civil Procedure 76(a), which requires public notice and the public's opportunity to be heard." *Id.*

After TUTSA's enactment, Texas law now "provides the ability for aggrieved parties to pursue their legal rights in court without fear of having to disclose the very information they are trying to keep secret."

Id.; see also HERBERT J. HAMMOND, TEXAS INTELLECTUAL PROPERTY LAW 69 (3d ed. 2016). This is so because “TUTSA overrides Rule 76a, allowing protective orders to be routinely granted.” Joseph F. Cleveland, Jr. & Herbert J. Hammond, *TUTSA vs. DTSA—Should I Bring My Trade-Secret Case In State or Federal Court?*, 30TH ANN. ADVANCED INTELL. PROP. L. COURSE (State Bar of Tex.), Feb. 2017, at 9–10 (citing TEX. CIV. PRAC. & REM. CODE § 134.007(c)).

Notably, the Legislature added these provisions to the Uniform Trade Secrets Act, making TUTSA, in part, a uniquely *Texas* trade-secrets law. This was no accident. After all, “Texas ha[d] taken a different approach toward public access to court records than most states.” Herbert J. Hammond, *Texas Uniform Trade Secrets Act*, 27TH ANN. ADVANCED INTELL. PROP. L. COURSE (State Bar of Texas), March 2014, at 15–16. And the “difficulties” caused by applying the nation’s first “comprehensive” and “leading edge” civil procedural rule crafted to “improve access and ensure greater openness in the judicial process” and still preserve Texas litigants’ trade secrets “ultimately require[d] further refinement” just as Justice Doggett predicted over two decades before TUTSA’s enactment. See Lloyd Doggett & Michael J. Mucchetti, *Public*

Access to Public Courts: Discouraging Secrecy in the Public Interest, 69 TEX. L. REV. 643, 684–85 (1991).

The Legislature directly addressed the anxiety Rule 76a caused would-be litigants in trade-secret cases by providing that in any action under TUTSA:

[A] court “shall preserve the secrecy of an alleged trade secret by reasonable means,” including a *presumption* in favor of granting protective orders to preserve the secrecy of trade secrets during the course of litigation, limiting access to attorneys and their experts, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without court approval. Section 134A.007 of the Act provides that to the extent the Act conflicts with the Texas Rules of Civil Procedure, such as TEX. R. CIV. P. 76a, TUTSA controls, and further provides that the Texas Supreme Court, which is responsible for promulgating the Texas Rules of Civil Procedures, may not amend or adopt rules in conflict with this or any other Texas TUTSA provision.

Herbert J. Hammond, *Texas Uniform Trade Secrets Act*, 27TH ANN. ADVANCED INTELL. PROP. L. COURSE (State Bar of Tex.), March 2014, at 16 (footnotes omitted) (citing TEX. CIV. PRAC. & REM. CODE §§ 134A.006, .007(c)); HERBERT J. HAMMOND, TEXAS INTELLECTUAL PROPERTY LAW 69 (3d ed. 2016).

By enacting TUTSA, the Legislature thus resolved a conflict between two competing public policies: (1) public access to court records; and (2) trade-secret protection for a litigant’s alleged trade secrets at any stage of an action. By specifically including language that ensured TUTSA displaced all conflicting laws, the Legislature pronounced that it had weighed these public policy interests in favor of sealing *certain* court records—i.e. those that disclose a litigant’s alleged trade secrets—in actions governed by TUTSA. *Cf. Philadelphia Indem. Ins. Co. v. White*, 490 S.W.3d 468, 479 (Tex. 2016) (acknowledging that “the Property Code reflects the Legislature’s public-policy determinations on the matter” addressed by the statute).

By 2017, two significant events occurred following TUTSA’s passage that led the Legislature to amend TUTSA. First, in May 2016, Congress passed the Defend Trade Secrets Act (DTSA), creating a federal civil cause of action for trade-secret misappropriation. [Joseph F. Cleveland, Jr. & J. Heath Coffman, *Texas Legislature Seeks to Amend the Texas Uniform Trade Secrets Act*, 12 THE TIPSHEET 20 \(May 2017\)](#). Second, this Court decided *In re M-I, L.L.C.*, 505 S.W.3d 569 (Tex. 2016), holding that in trade-secret cases brought under TUTSA, there is a

presumption that a party is allowed to participate in the defense of a trade-secrets case that is overcome only by a balance of certain factors. *Id.* at 578–79. Identical bills were introduced in the Texas House and Senate intended to, among other things, conform TUTSA’s provisions with the DTSA and codify this Court’s holding in *In re M-I*. Joseph F. Cleveland, Jr. & J. Heath Coffman, *Texas Legislature Seeks to Amend the Texas Uniform Trade Secrets Act*, 12 THE TIPSHEET 20 (May 2017).

An early version of these bills included an amendment to § 134A.006 of TUTSA that would modify the provision to add that a court’s discretionary power to seal court records exists “[n]otwithstanding any other law, including Rule 76a, Texas Rules of Civil Procedure” *Id.* at 23 (discussing proposed changes to TEX. CIV. PRAC. & REM. CODE § 134A.006(a)). However, § 134A.006

already granted trial courts the discretionary power to seal court records in order to preserve the secrecy of any alleged trade secrets. The court’s existing power to seal court records under TUTSA, combined with the fact that the law explicitly controls over conflicting Texas Rules of Civil Procedure—including Rule 76a—rendered the proposed amendment *unnecessary*.

Joseph F. Cleveland, Jr. and J. Heath Coffman, *Trade Secrets: Outlining New Amendments to the Texas Uniform Trade Secrets Act*, 80 TEX. B. J.

526, 527 (Aug. 2017) (emphasis added). Satisfied that TUTSA’s plain language controlled when in conflict with Rule 76a, the Legislature removed the superfluous amendment from the legislation.

IV. Respondents cannot avoid the Legislature’s intent as reflected in TUTSA’s plain language and legislative history.

TUTSA’s text is clear: in trade-secret cases brought under TUTSA, courts must take reasonable measures to preserve the secrecy of alleged trade secrets; there is a presumption in favor granting protective orders to preserve the secrecy of trade secrets; protective orders include orders sealing the court records of an action—at any stage of the action; and *whenever the Texas Rules of Civil Procedure conflict with these or any other TUTSA provisions—just as Rule 76a does here—TUTSA controls.* See TEX. CIV. PRAC. & REM. CODE §§ 134A.006(a)–(b), .007(c).

Respondent Title Source, Inc. (Title Source) acknowledges that TUTSA mandates that trial courts must take reasonable measures to protect alleged trade secrets but missteps by suggesting that once a court enters a protective order, it fulfills its obligations under TUTSA. Title Source Resp. Br. at 27. To support this proposition, Title Source relies, in part, on decisions outside of Texas and decisions from Texas that were decided before TUTSA’s enactment. *Id.* at 28, 31 (citing *Compaq Comput.*

Corp. v. Lapray, 75 S.W.3d 669, 674 (Tex. App.—Beaumont 2002, no pet.); *Laffitte v. Bridgestone Corp.*, 674 S.E.2d 154, 162 (S.C. 2009); *Brostron v. Warmann*, 546 N.E.2d 3, 5 (Ill. App. Ct. 1989)). But TUTSA was enacted, in part, to provide a Texas solution to a Texas problem. See *supra* at Parts II–III.

Title Source goes even further claiming that states outside of Texas that “use the *same* language as Section 134.006(a) have rejected HouseCanary’s argument that trade secrets receive absolute protection.” Title Source Resp. Br. at 31 n.8 (listing cases). As a threshold matter, a presumption that entering a protective order constitutes reasonable measures to preserve the secrecy of trade secrets does not amount to “absolute protection” of trade secrets, as Title Source suggests. See TEX. CIV. PRAC. & REM. CODE § 134A.003 (a-1) (“On application to the court, an injunction shall be terminated when the trade secret has ceased to exist.”). Furthermore, Title Source’s argument that “courts in other states . . . use the *same* language” as § 134A.006(a) is misplaced because the Ohio and Colorado cases cited interpret a version of the UTSA that is *similar* but not identical to TUTSA. And it is the language that is *not the same* in TUTSA that distinguishes it from the version of UTSA adopted

by Ohio and Colorado (OCUTSA). OCUTSA includes the following provision:

In an action under [the State’s UTSA], a court shall preserve the secrecy of an alleged trade secret by reasonable means that may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

See State ex rel. ABM Janitorial Midwest, Inc. v. Franklin Cty. Ct. Com. Pl., No. 09AP-27, 2010 WL 629204, at *1 (Ohio Ct. App. 2010) (citing OHIO REV. CODE § 1333.65); *State ex rel. Records Deposition Serv. v. Aurelius*, No. 78456, 2001 WL 233402, at *2 (Ohio Ct. App. 2001) (citing OHIO REV. CODE § 1333.65); *Pappas v. Frank Azar & Assocs., P.C.*, No. 06-CV-01024-MSK-BNB, 2007 WL 1549037, at *4 (D. Colo. 2007) (citing COLO. REV. STAT. § 7–74–106). Conspicuously absent from OCUTSA is *any* legislative mandate establishing a presumption that entering a protective order satisfies the trial court’s duty to use reasonable measures to preserve the secrecy of a litigant’s trade secrets. Indeed, OCUTSA provides that “sealing the records of the action . . . may . . . preserve the secrecy of an alleged trade secret by reasonable means” while TUTSA provides that “sealing the records of the action” presumes

a court preserved “the secrecy of an alleged trade secret by reasonable means.” *Compare* COLO. REV. STAT. § 7–74–106; OHIO REV. CODE § 1333.65, *with* TEX. CIV. PRAC. & REM. CODE § 134A.006(a). Absent TUTSA’s dissimilar language that speaks directly to the issue before this Court, Ohio and Colorado court decisions are simply inapposite and provide no basis for this Court to affirm the court of appeals below.

Next, Title Source repeatedly focuses on purported failures by HouseCanary to abide by the parties’ stipulated protective order. *See* Title Source Resp. Br. at 3–4, 6–7, 9–15. But the issue before this Court is whether the *trial court* abused its discretion by entering the post-trial sealing order. Pet. Br. at 13. TUTSA makes clear that the trial court must take reasonable measures to protect alleged trade secrets at *any stage* of the litigation and that entering a sealing order is presumed to be a reasonable measure. TEX. CIV. PRAC. & REM. CODE § 134A.006(a)–(b). Thus, even if it is true that HouseCanary violated the prior stipulated protective order, TUTSA mandates that the trial court continue to take reasonable measures to preserve alleged trade secrets at any stage of the litigation. *Id.* The language “at any stage” is not qualified by “unless a party violates a prior stipulated protective order.” Title Source thus

argues that TUTSA’s mandate begins and ends based on the parties’ behavior alone—which is effectively the same as the trial court’s obligation under Rule 76a prior to TUTSA’s adoption. *See supra* at Parts II–III.

Finally, Title Source repackages these arguments to conclude that “[t]here is no conflict to resolve” between Rule 76a and TUTSA. Title Source Resp. Br. at 32, 32 n.9.

Respondents Houston Forward Times and Reporters Committee for Freedom of the Press (Media Intervenors) similarly claim that Rule 76a and TUTSA do not conflict but instead “they compliment each other.” Resp. Media Intervenors Br. at 29. Without citation to authority, Media Intervenors claim that “TUTSA contemplates sealing through Rule 76a—because the Legislature recognized in crafting TUTSA that Rule 76a applies to all sealing requests.” *Id.* Amicus agrees but for presumably different reasons. When crafting TUTSA, the Legislature certainly understood that—until a Texas version of UTSA became law—Rule 76a applied to all sealing requests. *See supra* at Parts I–II. This is precisely one of the facets of Texas law governing trade secrets the Legislature *sought to change*. *See supra* at Part III.

Media Intervenors next attempt to distinguish between sealing orders and protective orders claiming that “TUTSA and Rule 76a do different things. Rule 76a provides parties with a mechanism to obtain a sealing order TUTSA, on the other hand, addresses the protection of trade secrets through pretrial ‘protective order[s]’” Media Intervenors Br. at 29–30 (alteration in original). In fact, Media Intervenors claim the longstanding distinction between the two orders served as the basis for the Legislature to “limit[] § 134A.006(a) to ‘protective orders.’” *Id.* at 30. Media Intervenors do not explain why TUTSA is limited to discovery-related “protective orders” and not “sealing orders” that “have always concerned treatment of documents in ‘court files’ and ‘court records,’ *not* discovery.” *Id.* at 29 (emphasis in original). TUTSA’s text is clear: “Protective orders may include . . . sealing the records of the action” TEX. CIV. PRAC. & REM. CODE § 134A.006(a).

Media Intervenors’ interpretation is puzzling for a number of reasons. First, Rule 76a was controversial, in part, because of its application to unfiled discovery. Herbert J. Hammond, *Texas Uniform Trade Secrets Act*, 27TH ANN. ADVANCED INTELL. PROP. L. COURSE (State

Bar of Tex.), March 2014, at 16 n.192. Rule 76a defines “court records” for purposes of sealing court records, in part, as “discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.” TEX. R. CIV. P. 76a(2)(c). Amicus agrees that the Legislature aimed to remove such discovery from the burdensome procedures by enacting TUTSA. *See supra* at Part III. But Media Intervenors fail to explain the mechanism by which the Legislature intended TUTSA to govern sealing orders that include court records under Rule 76a(2)(c) but not court records as defined under Rule 76a(2)(a) (including “all documents of any nature filed in connection with any matter before any civil court . . .”). In other words, Media Intervenors admit that TUTSA conflicts with and therefore preempts Rule 76a(2)(c) (discovery) but simultaneously claim TUTSA “compliments” Rule 76a(2)(a) (court records).

Media Intervenors make difficult what is actually quite simple: TUTSA provides that “[t]o the extent that [TUTSA] conflicts with the Texas Rules of Civil Procedure, [TUTSA] controls.” TEX. CIV. PRAC. &

REM. CODE § 134A.007(c). Neither TUTSA’s text, its legislative history, nor its purpose provide any reasonable basis to support Media Intervenors’ statutory construction.

V. The Court should use its rulemaking authority to clear-up any confusion.

Should the Court determine that it need not reach the issue of whether TUTSA conflicts with Rule 76a to dispose of this case on the merits, this case highlights a need for the Court to resolve any uncertainty in Rule 76a based on TUTSA’s plain language and legislative history.³ Trade secret owners’ abilities to protect their trade secrets from disclosure depend on this resolution. Indeed, Media Intervenors highlight the wide-spread confusion over the definition of “court records” in Rule 76a(2)(a), *see supra* at Part IV, that could be resolved by two amendments.

First, Rule 76a(2)(c) should be amended to delete: “except discovery in cases originally initiated to preserve bona fide trade secrets or other

³ Government Code Section 22.004 “gives the legislature the power to overturn Court-approved procedural rules.” Nathan L. Hecht, et al., *How Texas Court Rules Are Made* at 3 (2016) (citing TEX. GOV’T CODE § 22.004(b) (“The rules and amendments to rules remain in effect unless and until disapproved by the legislature.”)). In addition, the Legislature has enacted statutes—like TUTSA—that serve as “procedural rules and expressly prohibit the Court from changing them.” *See id.* (listing statutes).

intangible property rights.” This deleted provision should be replaced with: “except discovery involving alleged trade secrets or other intangible property rights.” See Jennifer S. Sickler & Michael F. Heim, *The Impact of Rule 76a: Trade Secrets Crash and Burn in Texas*, 1 TEX. INTELL. PROP. L. J. 95, 100 (1993) (suggesting a nearly identical rule).

Second, to leave no doubt that the Legislature intended that TUTSA preempt *any* Texas Rule of Civil Procedure in conflict with the Act, Rule 76a(2)(a) should be amended to add the following as a fourth exception to the definition of “court records”: “(4) documents filed in an action under the Texas Uniform Trade Secrets Act or in an action involving alleged trade secrets or other intangible property rights.” See *id.* (suggesting a nearly identical rule).

These changes would also ensure the constitutionality of Rule 76a following the Legislature’s adoption of TUTSA. TEX. CONST. art. V, § 31(a); see also TEX. CIV. PRAC. & REM. CODE §§ 134A.002, .004, .006(a)–(b), .007(c)).

CONCLUSION AND PRAYER

For the reasons stated, and to avoid future litigation on the subject, the Intellectual Property Section and the Business Law Section of the

State Bar of Texas respectfully request this Court reverse the judgment of the San Antonio Court of Appeals, reinstate the trial court order sealing the eight trial exhibits, and hold that when any Texas Rule of Civil Procedure conflicts with any TUTSA provision—such as Rule 76a here—TUTSA controls pursuant to the Legislature’s express mandate codified in § 134A.007(c) of the Texas Civil Practice and Remedies Code.

Should the Court determine that this case can be decided without reaching this issue, Amicus respectfully requests the Court promulgate amendments to Rule 76a to ensure administration of the Texas Rules of Civil Procedure is “not inconsistent with the laws of the state” and remains “necessary for the efficient and uniform administration of justice” under article V, § 31(a) of the Texas Constitution.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document was produced on a computer using Microsoft Office 365 Business and contains 6,981 words, as determined by the computer software's word-count function, excluding those sections of the document listed in TEX. R. APP. P. 9.4(i)(1).

/s/ Joseph F. Cleveland, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was forwarded to the following counsel of record pursuant to the applicable Rules of Appellate Procedure:

/s/ Joseph F. Cleveland, Jr.
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DOCS-#1102431-v2

From: Steve Fischer

Date: Wednesday, April 1, 2020 at 4:05 PM

To: "dawn.buckingham@senate.texas.gov" <dawn.buckingham@senate.texas.gov>

Cc: Randall Sorrels, Larry McDougal

Subject: Re; Texas Senate Confirmation - SCJC

Dear Senator Buckingham;

First please accept my apologies for not responding to your January letter concerning my confirmation. I had so many times planned to write that while I am not seeking confirmation, that I would love to explain what I know are serious problems with that commission. I would still like to speak to you. Many attorneys in your district including your long-term friend Jeri Lee Ward were ready to vouch for me, but I had put them on hold.

During my confirmation process; I had posted publicly on Social Media and elsewhere that I was not interested in a 6-year term. I suggested names of attorneys who might be interested. Among other things I would be 76 - I need some retirement time. As you can see with all the resignations and "replacements" during the past 6 months, most don't seem to stay for their term. In fact, when a member resigned two months ago and I asked "Does anyone serve a full-term?" a nother commissioner replied " Only you greedy lawyers want all six years". The atmosphere is not pleasant and the Commission uses "Confidentiality " to justify "Secrecy" in matters that are not related to specific cases.

I am copying this letter to State Bar President Randy Sorrels and incoming Bar President Larry McDougal. While they have known my intent since I was nominated, this letter will formalize the process. I would like them to start finding my replacement starting in October.

My current plans are to serve until the end of year, however I may forego the December meeting.

I so hope that the Texas Senate will introduce the Transparency Measure that passed 31-0 last session. My suggestion is that it go even further as to insure the public is aware of vital and non-privileged information.

I am going to make this public in the near future. The Chair wrote a negative letter because of my struggles with the very issue of transparency.

Once again I apologize for not writing sooner. It is not like me to ignore an important letter dated from January. I was agonizing over how to explain that I did not plan to serve anywhere near the full term. My current plans are to serve until the end of year, however I may forego the December meeting.

Please do not hesitate to call

Sincerely

Steve Fischer

Steve Fischer, Attorney at Law
525 Corto Way - Sunset Heights
El Paso, Texas 79902-3817

STATE BAR OF TEXAS



August 20, 2020

Mr. Steve Fischer
525 Corto Way
El Paso, TX 79902-3817
sfischerlaw@gmail.com

Delivered via email

Re: Resignation Acceptance

Dear Steve,

Your email communication to Senator Dawn Buckingham dated April 1, 2020, (attached) reflected your formal resignation from the State Commission on Judicial Conduct. This letter is to inform you that we consider your resignation to be effective upon the completion of the Commission's October 2020 meeting (currently scheduled for October 15, 2020).

Our intention is to submit our recommendation for your replacement on the Commission to the State Bar Board for consideration at its September 25, 2020, meeting, to allow your replacement to begin service after the Commission's October 2020 meeting.

Thank you for your service on the Commission on behalf of the State Bar of Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry McDougal".

Larry McDougal
President

A handwritten signature in black ink, appearing to read "John Charles Ginn".

John Charles Ginn
Chair of the Board

cc: Sylvia Firth, President-elect
Randy Sorrels, Immediate Past President

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 17-9083

REGULATIONS GOVERNING THE CHOICE OF MEMBERS OF THE STATE COMMISSION ON JUDICIAL CONDUCT BY THE BOARD OF DIRECTORS OF THE STATE BAR OF TEXAS

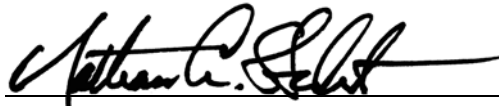
ORDERED that:

Pursuant to Article V, Section 1-a(2) of the Texas Constitution, the following regulations govern the appointment of members of the State Commission on Judicial Conduct by the board of directors of the State Bar of Texas:

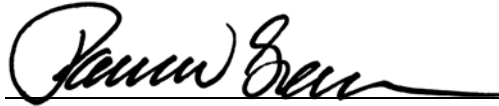
Each member of the State Commission on Judicial Conduct (“the Commission”) chosen by the board of directors of the State Bar of Texas (“the board”) pursuant to Article V, Section 1-a(2) of the Texas Constitution must be a lawyer, licensed in Texas, with more than ten years’ practice at the time of the selection, of good repute, and with high ethical standards. The president of the State Bar of Texas (“the president”) and the chair of the board (“the chair”) must confer and nominate, for consideration by the board at a scheduled meeting (“the meeting”), one or more qualified lawyers for each position to be filled. The nominee(s) shall be published to the board and officers of the State Bar at least fifteen calendar days prior to the duly scheduled meeting of the board of directors at which they will be considered. Additional nominations for a position may be made by any board member by informing the president and the chair in writing no later than ten calendar days before the meeting. The board must choose each Commission member by majority vote at the meeting. The chair must promptly notify the Chief Justice of the Supreme Court, the Governor, the Speaker of the House, the Lieutenant Governor, and the chair of the Senate Committee on Nominations of each selection.

This Order supercedes the Order in Misc. Dkt. No. 12-9014 (Jan. 24, 2012).

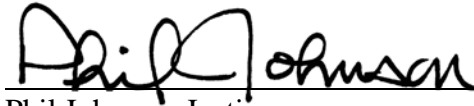
Dated: August 10, 2017.



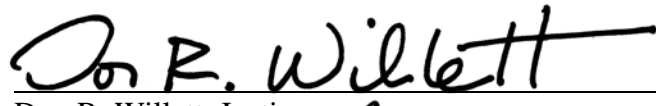
Nathan L. Hecht, Chief Justice



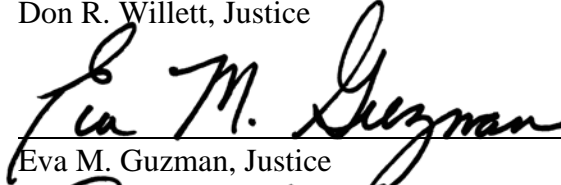
Paul W. Green, Justice



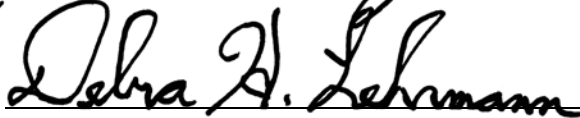
Phil Johnson, Justice



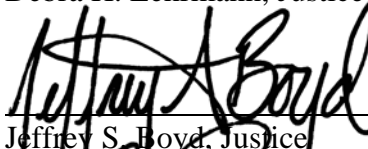
Don R. Willett, Justice



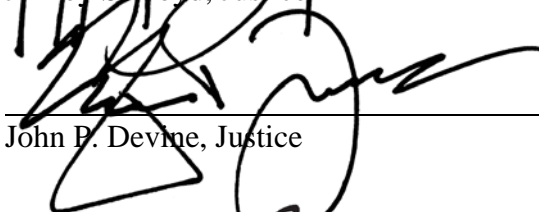
Eva M. Guzman, Justice



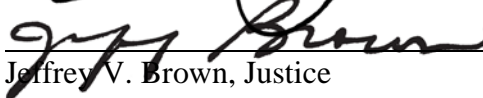
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

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May 2019—Present	Legal Counsel—DHR Health Legal Counsel for largest physician owned hospital in country. Handle everything from litigation management, physician contracts, leases, etc.
Jan.2001---Present	Asst. Judge, Municipal Court—City of McAllen Presiding over jury and non jury trials, property hearings, show cause hearings and truancy hearings, setting bond amounts in misdemeanor and felony cases, issuing search warrants, issuing summonses and arrest warrants; responsible for granting Emergency Protective Orders; reviewing bond reductions.
May 1999---Sept. 2019	Ret. Lieutenant Colonel/U.S. Army Trial Judge, USAR Presided over Special and General Courts-Martial, along with conducting hearings on evidentiary matters. Ensured trials were conducted fairly and efficiently; and in accordance with the law.
May 2016—May 2019	Member/Partner—Dykema Cox Smith, McAllen, TX Member of 450 lawyer law firm with offices nationwide; advise and represent clients in commercial and general litigation matters, along with serving as a mediator and arbitrator in personal injury, commercial, employment, international and personal injury law cases.
April 2008—March 2016	General Counsel/Chief Legal Officer, Loya Insurance Group Lead attorney at Loya Insurance Group; primary attorney in charge of supporting Loya Insurance Group's Insurance segment in North America, along with overseeing the handling of litigation throughout the country.
Sept. 1999—Jan. 2001 Feb. 2004—Jan. 2005	Retired State District Judge,Hidalgo County, Texas State District Judge for both 139 th & 398 th State District Courts. Presided over jury and non-jury trials involving both civil and felony criminal cases, divorce cases, custody cases family violence cases, cases involving title to land, including personal injury, commercial litigation, products liability; conducted hearings; issued search orders.

LICENSED:

State of Texas
Southern District of Texas, Federal Court
Northern District of Texas, Federal Court
United States Court of Appeals for the Armed Forces
State of Illinois
United States Supreme Court

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Certified Mediator--National Mediation Academy-Civil & Commercial Mediation Certification
Certified Arbitrator-National Arbitration Institute
Certified Litigation Manager; Litigation Management Institute, Columbia Law School

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Board Member, Sen. Ted Cruz U.S. Military Academy Selection Committee (2015—Current)
Commissioner, Office of the Governor, Texas Military Preparedness Commission (2010-2012)
Board of Directors, State Bar of Texas—(2005-2008)
Board of Directors & Fellow, State Bar College (2011--Present)
Task Force on Additional Resources for Complex Cases, State Bar of Texas (2011)
Board of Directors--One Call Board/Texas Underground Facility Notification Corporation
(Appointed by Governor of Texas Rick Perry) (2001---2004)
Deputy Regional President—Hispanic National Bar Association (2003--2006)
President--Hidalgo County Bar Association (1999--2000)
Board of Directors-Hidalgo County Bar Association (1998--1999)
President--Hidalgo County Young Lawyers Association (1997--1998)
Board of Directors-Texas Rural Legal Aid (1999--2001)
Board of Directors--Texas Young Lawyers Association, State Bar of Texas (1998--1999)
Secretary--Hidalgo County Young Lawyers Association (1995--1996)
Life Fellow--Texas Bar Foundation (2001--Current)

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The Army Meritorious Service Medal x 5
The Army Commendation Medal x 2
The Army Achievement Medal x 2
The Army Reserve Achievement Medal
Military Outstanding Volunteer Service Medal
Global War on Terrorism Service Medal
National Defense Service Medal
Army Reserve Service Medal
Reserve Components Overseas Training Ribbon

Civilian:

Jim Bowmer Professionalism Award—Texas Bar College--2020
Volunteer & Leadership Award-University of Houston Law Center-2019
Texas Center Professionalism Award—Hidalgo County Bar Association and the Texas Center for
Legal Ethics and Professionalism—2009

Best Project Award, Hidalgo County Bar Association—"Wills for Heroes"
Young Hispanic Leader in the U.S.--2002
(Selected as a Young Hispanic Leader in the United States by the Embassy of Spain, Washington, D.C. and U.S./Spain Council. Studied in Madrid & Santander, Spain—Summer 2002)

SELECTED VOLUNTEER ACTIVITIES:

Volunteer Judge, McAllen Teen Court (1999--Current)
Vice-President, McAllen Citizen's League (2002--Current)
State Bar of Texas Pro Bono Work Group(2015—2018)

EDUCATION:

UNDERGRADUATE:

TEXAS A&M UNIVERSITY, College Station, TX

Bachelor's Degree (History, Minor in Political Science)-Summer 1988

Awards	Distinguished Student Award, College of Engineering Distinguished Academic Military Student Award
&	Texas A&M Corps of Cadets--1984-88 (Executive Officer, Squadron 6) Parson's Mounted Calvary
Activities	Student Conference on National Affairs-Vice Chairman Senior Class Council--Public Relations Officer Committee for the Awareness of Mexican American Culture

LEGAL:

UNIVERSITY OF HOUSTON LAW CENTER, Houston, TX

Doctor of Jurisprudence- Summer 1991

Awards	Hispanic Law Students Association	&
Activities	Student Bar Association	

U.S. ARMY, JUDGE ADVOCATE GENERAL'S SCHOOL, Charlottesville, Virginia

Graduate of the Judge Advocate Officer Basic Course-June 2000

U.S. ARMY, JUDGE ADVOCATE GENERAL'S SCHOOL, Charlottesville, Virginia

Graduate of the Judge Advocate Officer Advanced Course-January 2005

U.S. ARMY, COMMAND GENERAL & STAFF COLLEGE, Ft. Leavenworth, Kentucky

ILE--March 2014

U.S. ARMY, MILITARY JUDGES SCHOOL, Charlottesville, Virginia

Graduate of the 59th Military Judges Course—April/May 2016

FOREIGN STUDY:

Mexican Legal Studies Program, Mexico City, Mexico (1989)
University of Melendez Pelayo and Ortega & Gasset Research Inst., Santander & Madrid , Spain (2002)
National Judicial College, Comparative Law Program, Madrid, Spain (Summer 2004)

ARTICLES & SPEAKING ENGAGEMENTS:

"Enforcement of the Clean Water Act and Stormwater Mgmt. in Texas," Caceres, Spain 2017
"When Judges Go Bad", Texas Minority Counsel Program, State Bar of Tex., McAllen, TX 2012
"Alternative Fee Agreements", Council for Litigation Management, San Diego, Calif. 2012
"US/Mexico Water Resource Mgmt. Law and the Rio Grande/Rio Bravo; Lisbon, Portugal 2010
"Water Resource Management Law", Caceres, Spain 2005
"A Brief Overview of Mexican Labor Law", Monterrey, Mexico 2004

News Articles & Video:

1. Regents appointment: "Valley needs more representation"; San Antonio Express News-February 2013
<https://www.mysanantonio.com/news/education/article/Regents-appointment-Valley-needs-more-4300681.php>
2. "New UT regent to bring Valley perspective to merger"; McAllen Monitor, May 2013
http://www.themonitor.com/news/local/article_6c5ccee-c80e-11e2-aaec-0019bb30f31a.html
3. "There are Things Greater than Oneself"; Texas Border Business, Dec. 2013
<https://texasborderbusiness.com/things-greater-ones-self-ernest-aliseda-regent-board-regents-university-texas-system/>
4. UTRGV celebrates new Science Research Building with ceremonial groundbreaking during HESTEC;
<https://www.utrgv.edu/en-us/about-utrgv/news/press-releases/2015/october-05-utrgv-celebrates-new-science-research-building-with-ceremonial-groundbreaking-during-hestec/>
5. UTRGV celebrates launch of \$54 Million Academic Building on Brownsville Campus
<https://www.utrgv.edu/en-us/about-utrgv/news/press-releases/2016/march-22-utrgv-celebrates-launch-of-54-million-academic-building-on-brownsville-campus/index.htm>
6. Permanent University Funds to fuel construction at UTB, UTPA; Brownsville Herald; November 2013
http://www.brownsvilleherald.com/news/local/permanent-university-funds-to-fuel-construction-at-utb-utpa/article_0882ecbe-4dab-11e3-a070-0019bb30f31a.html
7. Family, friends and fireworks mark Legacy Commencement at UTB
<http://business.brownsvillechamber.com/news/details/family-friends-and-fireworks-mark-legacy-commencement-at-utb>
8. Video: UT Regent Ernest Aliseda speaks to graduates at final UTB Commencement
<https://www.youtube.com/watch?v=liFI6B1TNE0>



Ernie Aliseda is the Legal Counsel for DHR Health and a recently retired Lieutenant Colonel in the U.S. Army Reserves, Judge Advocate General Corps, where he served as an Army Trial Judge, as well as a recently retired State District Judge. Judge Aliseda has dedicated the greater part of his life to public service and giving back to his community, profession, state, and country. He recently finished serving a six (6) year term on the University of Texas System, Board of Regents, where he was Chairman of the Academic Affairs Committee, along with the Audit, Compliance and Risk Management Committee. Along with his years of military service in the Army and Army Reserves, Judge Aliseda has served in various capacities. In 1999, he was appointed to serve as a State District Judge for the 398th State District Court in Hidalgo County by then Governor George W. Bush. He was later appointed by Governor Rick Perry in 2002 to serve on the One Call Board, where he served until Governor Perry appointed him State District Judge for the 139th State District Court in 2004. In 2008 and 2009, then Major Aliseda was called to active duty in support of Operation Enduring Freedom, where he served as the Chief of Federal Litigation for the Office of the Staff Judge Advocate of the Army XVIII Airborne Corps at Fort Bragg, North Carolina. There, Judge Aliseda was assigned as a Special Assistant U.S. Attorney and was in charge of all prosecutors who tried both military personnel and civilians for felony and misdemeanor offenses in the federal courts of North Carolina. Upon his return from active duty, he would later be appointed as a Commissioner on the Governor's Texas Military Preparedness Commission and resigned his appointment to serve on the U. T. System Board of Regents.

Judge Aliseda is currently a Life Fellow and Board member of the College of the State Bar. In 2005, he was elected to a three-year term by the attorneys in South Texas as State Bar Director for the State Bar of Texas, representing the attorneys in 17 South Texas counties. Judge Aliseda is also a past President of the Hidalgo County Bar Association; a past President of the Hidalgo County Young Lawyers Association; past Board Member, Texas Young Lawyers Association, State Bar of Texas; past Board Member, Texas Rural Legal Aid; and also a Life Fellow of the Texas Bar Foundation. He volunteers his time as a volunteer Judge for the McAllen Teen Court program and also as a Vice President of the McAllen Citizen's League. A frequent lecturer, Judge Aliseda has lectured on various legal topics throughout the United States, Mexico, and abroad in Portugal and Spain. In addition to numerous military awards, in 2008 Ernie was awarded the "FBI Director's Award" for his work as a federal prosecutor, in 2009 he was awarded the "Ethics Award" by the Hidalgo County Bar Association and the Texas Center for Legal Ethics, the "Community Service & Leadership Award" in 2019 by the University of Houston Law Center and just recently with the Jim Bowmer Professionalism Award by the Texas Bar College.

Mr. Aliseda earned his undergraduate degree from Texas A&M University and his law degree from the University of Houston Law Center. He is a licensed attorney in Texas and Illinois. He is Board Certified by the Texas Board of Legal Specialization in Personal Injury Trial Law, along with being a certified mediator, arbitrator, and litigation management professional. Mr. Aliseda is married to Debbie Aliseda, who is a former President of the McAllen ISD School Board. They have five children; one still in college and one attends McAllen public schools.

Douglas S. Lang, Esq.
Direct Dial: (214) 981-9985
Email: Lang.doug@dorsey.com

September 14, 2020

E.A. "Trey" Apffel, III, Esq.
Executive Director
State Bar of Texas
Texas Law Center
1414 Colorado
P.O. Box 12487
Austin, TX 78711O

Re: Recommendation of Ernie Aliseda for Appointment
to the State Commission on Judicial Conduct

Dear Mr. Apffel:

I am honored to submit this recommendation and statement of support for the appointment of Ernie Aliseda to the State Commission on Judicial Conduct.

I know Ernie by reputation and have talked with him about his willingness to serve. Also, those who have contacted me about Ernie's nomination speak in superlatives about him. Finally, I have read a great deal about him. In my estimation, his achievements and the recognition he has received clearly demonstrate he is the kind of upstanding lawyer we need on the Commission. Ernie obviously lives by the Lawyers Creed.

As a former chair of the Commission, I can say that the work of the commission is critical to maintaining honesty and professionalism on the bench. Only people dedicated to that goal should sit on the commission because the work is physically and emotionally exhausting. In fact, it is just plain difficult to make decisions about the lives and careers of judges. However, it must be done. I am convinced that Ernie has the dedication to serve admirably as a commissioner.

September 14, 2020
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I respectfully request that the State Bar of Texas Board of Directors favorably consider the nomination of Ernie Aliseda for the position of Commissioner of the State Commission on Judicial Conduct.

Thank you.

Very truly yours,

A handwritten signature in cursive script, reading "Douglas S. Lang". The signature is written in black ink and is positioned above the printed name and title.

Douglas S. Lang
Former Justice, 5th District Court of Appeals

DAVID J. KLEIN
PO Box 2446
Corpus Christi, TX 78403
Telephone (361) 452 – 3583
Facsimile (361) 998 – 9743
kleinlaw@att.net

PROFESSIONAL EXPERIENCE

Klein Law, PLLC - Corpus Christi, Texas, January 2006 to present

- Primary focus on criminal defense in state and federal courts.
- Tried to jury verdict over 45 cases involving capital murder, murder, violent and sexual offenses and federal conspiracy cases.
- Represent clients involved in family law disputes and general civil litigation cases.
- Represent professionals accused of wrongdoing, including disciplinary matters involving law enforcement, grievances from the State Bar of Texas, and the Judicial Conduct Commission.

Woolsey & Associates, Corpus Christi, Texas. Contract Attorney, November 2013 – present.

- Insurance defense firm focusing on defending professionals facing medical malpractice claims.

Ralph Rodriguez & Associates, Corpus Christi, Texas. Contract Attorney 2010 -2011.

- Primarily insurance defense litigation.

Hermansen, McKibben, Woolsey, and Villarreall, Corpus Christi, Texas Attorney, 2000-2006.

- Primarily insurance defense litigation focusing on personal injury, medical malpractice, and municipality defense.

Krell & Torigian, Houston, Texas Attorney 1998-2000.

- Construction litigation in state and federal courts
- Securities fraud litigation and arbitration
- Corporate governance and document drafting

EDUCATION

- University of Texas at Austin, School of Law, J.D., 1998
- University of Texas at Austin, BBA, Finance, 1995

PROFESSIONAL AND PERSONAL AFFILIATIONS

- Eagle Scout
- Member, State Bar of Texas, admitted 1998
- Licensed in United States District Court for the Southern and Western Districts of Texas

- Admitted to practice before the Fifth Circuit Court of Appeals
- Admitted to practice before the United States Supreme Court
- President of the congregation, Trinity Lutheran Church, 2012 to present
- Member of Board of Elders, Trinity Lutheran Church
- Member, Texas Criminal Defense Lawyers Association
- Past President, Corpus Christi Bar Association, Criminal Section
- Past member, Board of Directors, Corpus Christi Bar Association
- Past Staff Attorney for Veterans Court, Nueces County
- Life member, Texas Exes
- Member, Bucaraders

Resume
Of
Attorney Clifton L. Roberson

Date of Birth: July 30, 1956

Marital Status: Married, Chris D. Bell-Roberson

Address: 100 East Ferguson Street, Suite 1104
Regions Bank Building
Tyler, Texas 75702
903-597-4085 Office
903-521-9501 Cell
cliftonroberson@sbcglobal.net

Professional Position:

Criminal Defense Attorney

Education:

Doctorate of Jurisprudence –	South Texas College of Law Houston, Texas	December 18, 1988
Bachelor of Science -	Southern Methodist University Dallas, Texas	May 15, 1982

Additional Coursework:

Completed additional coursework in the Graduate School for Public Administration (1982-1985)
Southern Methodist University, Dallas, Texas

Licensed and Admitted to Practice:

In all Courts of the State of Texas, November 1989
U. S. District Court for the Eastern District of Texas

Professional Experience:

Solo Practitioner, Aug. 1982 – Present
Represent private clients in legal proceedings.

Contract Attorney with the 241st Judicial District Court, 2005 – Present
Representing indigent defendants in felony charges

Contract Attorney with the Smith County Juvenile Court
Represented indigent juveniles charged with a criminal offense

Assistant Criminal District Attorney for Smith County, Tyler, Texas 1989 – Aug. 1992
Represented the State of Texas in litigating criminal charges

Honors and Professional Affiliations:

Member, Texas Criminal Defense Lawyers Association
Member, Smith County Criminal Defense Lawyers Association
Member, Texas College Board of Trustees
Member, Paralegal Advisory Committee with Tyler Jr. College
Member, The Tyler Smith County Grievance Committee (for Attorneys)
Recipient of the Weldon Holcomb Memorial Smith County Justice Award
Recipient of the Tyler Metro Chamber of Commerce Community Ambassador Award

