Managing an office, like representing a client, has much to do with expectations. If too much is promised then there is disappointment when those predictions fail to materialize. On the other hand, it is the job of both the manager and the lawyer to explain to their employees and clients what is likely to happen. I will try to set your expectations.

We are very lucky to be a public defender office in Harris County, Texas, at this moment. Most public defender offices in the United States have always suffered from too little funding and too many cases.

Before the Texas Fair Defense Act, private lawyers in Harris County were paid for appearances only, not work done out of court. Favored lawyers were allowed to reset cases for extra money, but quick dispositions were highly encouraged. Lawyers were favored if they contributed to judges’ campaigns and moved their cases expeditiously.

None of this makes our work easy. It will always be hard, because the more time we have, the more time we can work on our clients’ cases. There is always more to do. Although resources have been adequate we will never have everything we need. This issue manifests itself in many ways.

One way it occurs is with space. When the office started we shared a portion of a floor. Then we took an entire floor. Then we added part of another floor. Now we have two entire floors and it is not enough. Commissioners court gave us a mandate to significantly increase our percentage of cases, which requires a large addition of employees, particularly lawyers. Although we will keep the current two floors, further space at the CJC is not possible.

I met with Facilities and Property Management (FPM), Engineering and Budget recently. I am optimistic that there is a real commitment on their part to make sure any additional space we receive is near the courthouse complex – both close the courts and our current space. I expect to know that answer within weeks and occupancy could be later this year. When I know where the space will be and how much footage, I can let you know how that will change where everyone sits. My overall intention is to keep those who regularly attend court in this building to remain here.
Holistic Happenings

By: Betsy Stukes

Still don’t know what client advocates do? Maybe you should be asking what they can’t do instead.

Advocate Daniel Moreno received a referral that many people would think was impossible: I have an elderly client who needs to get back to New York City so that she can continue her cancer treatments and reconnect with the resources she already has in place there—including housing that she’s waited three years to get and will lose if she does not return soon. Oh yeah, and she’s currently incarcerated on a $5,000 bond with no financial resources.

Undeterred, Daniel reached out to The Bail Project who agreed to post the client’s bond. The Bail Project had never posted bond for an out-of-state client before, so Daniel helped them invent a process for doing so in order to help this client. At the same time, he talked to the Texas Jail Project* and applied for a $570 budget to get the client back to New York. He booked a flight to NYC and a motel room in Houston for a night so that client would have time to check in with pretrial services and land in the city at a reasonable hour the next day. He even managed to pay for the client’s cell phone bill with the budget he received!

Through it all, Daniel (a Californian) reports that the client and he bonded over their dislike for Houston’s intolerable heat and Texas’s regrettable but infallible love of law enforcement.

Have a client with a unique situation regarding bond? Send a referral to the Client Advocates (PDO.Advocates@pdo.htx.net). Apparently, they can work miracles**!

*This organization has since shut down.
**Within reason

Appellate Tip: Enhancements

By: Jani Maselli

The law on enhancements is complicated and unfortunately, a bit easy to miss possible errors. There is no better guide than this treatise: Texas Practice Series - Criminal Practice and Procedure by George E. Dix and John M. Schmolesky (available on Westlaw Secondary Sources).

Begin with chapter 46:78:

Enhancement of punishment refers to increasing the range of punishment for the primary offense as a result of proof of some enhancing factor such as one or more prior criminal convictions of the defendant.

43A Tex. Prac., Criminal Practice And Procedure § 46:78 (3d ed.).


However, out-of-state probations can be final convictions for an offense containing elements that are substantially similar to the elements of an offense listed under subsection 12.42(c)(2)(B) and may be used to enhance punishment in Texas under subsection 12.42(c)(2), even if the sentence for that conviction was probated and the probation was not revoked. Ex parte White, 211 S.W.3d 316, 319 (Tex. Crim. App. 2007).


The appellate division is always glad to review your enhancements for possible error.
Big Wave in Expunction Case Law
Ex parte R.P.G.P., No. 19-1051, 5/17/21
By: Leslie Ginzel
The Texas Legislature has made small changes to expunction law nearly every session of the last 20 years. None of those changes produced the type of sweeping change that occurred when the Texas Supreme Court handed down it’s decision in Ex Parte R.P.G.P., in May of this year. Prior to this decision, the law of the land was that dismissals resulting from the same criminal episode as a conviction or guilty plea, were expressly ineligible for expunction. Thinking about the criminal practice and how common it is for charges to be stacked and used as leverage to encourage pleas, this rule effectively eliminated eligibility for expunction for more than 50% of all dismissed cases.

This opinion makes drastic changes to eligibility for dismissed offenses arising from the same criminal episode, clearing the way for expunction of all dismissed misdemeanors and creating an argument for felony dismissals to be expunged under certain circumstances. In Holistic we believe that the life of the case is the life of the client. A dismissed case will continue to burden clients opportunities for employment, housing and other resources. Refer any client for a record sealing review by emailing: PDOCivil@pdo.hctx.net.

Jury Charge Tip of the Month
By: Cheri Duncan
The single biggest problem with the Texas Criminal Pattern Jury Charges doesn't have anything to do with the charges themselves. Instead, it is the same problem that plagues so many reform efforts, large and small, in the Harris County Courts, institutional inertia. It's the twin evils of “We've always done things this way,” and “We've never done things that way before.”

The dreadful Harris County charge bank’s instructions, with their run-on sentences and page-long paragraphs and unreadable Courier font, have the enormous advantage of being familiar to the judges and attorneys here. This gives judges a false sense of protection from reversal on appeal, as if the charge bank has somehow withstood the test of time, no matter now difficult its instructions may be for juries to muddle through.

So how do we get the courts unstuck?

First, by simple repetition. Submit a proposed jury charge from the PJCs in every case you try. The more judges see, in black and white, the vastly more familiar to the judge.

Second, by making change easy. Judges like the Harris County charges because they don't have to start from scratch. They just call (or have their court reporters call) the jury charge bank coordinator, Sheri Tucker, and request a draft charge.

When we provide our own draft charge, it takes away that advantage of convenience.

If the judge holds a pretrial hearing, consider submitting a draft charge at that time, letting the court know you will be moving to use the PJCs at the end of trial. That would give the judge a little time to consider them in light of the evidence at trial and to get comfortable with them. Obviously, this won't work for all judges, but for some, not being blindsided with a draft PJC charge during the charge conference might make a difference.

Finally, let the courts know that the Texas Court of Criminal Appeals encourages trial courts to use the PJCs. See, e.g., Elizondo v. State, 487 S.W.3d 185, 207 (Tex. Crim. App. 2016), quoting Reeves v. State, 440 S.W.3d 812, 818 (Tex. Crim. App. 2013):

"The model instructions subdivide the various issues into short lists that jurors may read and understand without undue difficulty. Perhaps most important, the pattern jury charge ensures that the jury understands that it is the State's burden to prove provocation beyond a reasonable doubt.... The instruction used in this case does not make that burden clear."

Reeves and Elizondo are only two examples of the CCA's preference for the Texas Criminal Pattern Jury Charges. Intern Connor Dorsey and I have found only one case in which the CCA disagreed with the Pattern Jury Charge's drafting committee. See Beltran de la Torre v. State, 583 S.W.3d 635, 643 (Tex. Crim. App. 2019) (disagreeing with the PJC committee's position that a joint possession charge is appropriate if raised by the evidence).

I am happy to help anyone request draft PJCs in trial by providing additional cites or by arguing the charge conference for you, if I am available. Feel free to call me or email any time.

Legislative Update
By: Ted Wood
Hello Everyone,

I wanted to bring your attention to Senate Bill 1373 that was passed during the Texas Legislature’s most recent regular session. The bill requires that ability-to-pay inquiries be conducted “on the record.”

Ability-to-pay inquiries were mandated back in 2017. The relevant statute is Article 42.15(a-1) of the Code of Criminal Procedure. The statute went into effect on September 1, 2017. It requires trial judges to inquire as to a defendant’s ability to pay any assessed fine and court costs. If the defendant cannot afford to pay, the judge can choose from several options for satisfaction of the assessment without the payment of money. This is a very beneficial piece of legislation for our clients who typically find it difficult to pay their assessed fine and costs.

Ability-to-pay inquiries are to be conducted by the trial judge “during or immediately after imposing a sentence” in a case. Despite the law being in existence for over four years now, the inquiries are still not very common in Harris County. I would like to see them become commonplace. I believe that will happen by defense attorneys bringing the law to the attention of the judge at the conclusion of sentencing. Many thanks to all of you who have been requesting that these inquiries take place. Now, you can add a request that the inquiries be conducted “on the record.” If you have any questions, please let me know.
Hosted by Holistic Defense, this training is for any attorneys interested in meeting the new cohort and/or would like to ask questions about Client Advocate services.

Client Centered Conversation with Client Advocates
September 14, 2021 at 2pm

Synopsis
Nonappearance in a Protective Order Proceeding often results in a Lifetime Order of Protection which can effectively terminate parental rights. This CLE is designed as a primer for criminal defense attorneys representing clients in civil protective order cases. The CLE will cover the relevant Texas statutes, tips on defending your client at the hearing and negotiating an agreed order, ways to attack a default order, and the collateral consequences of a protective order on client's lives.

About the Speaker
Kimberly Ashworth is currently an Assistant Public Defender in the Holistic Services Division of the Harris County Public Defender's Office ("PDO"). Since joining the PDO in 2020, she has worked to develop a system of court appointments for PDO clients that have pending protective orders. Prior to joining the PDO, Kimberly worked as a staff attorney and adjunct professor at South Texas College of Law Houston and Texas Rio Grande Legal Aid, where she represented clients in cases involving domestic violence. She is a 2012 graduate of the University of Texas School of Law.

UPCOMING EVENTS

Harris County Public Defender's Office

ANNUAL FREE CLE

Register Online: http://harriscountypublicdefender.org/pdo_cle/

10TH ANNUAL PDO 10-HOUR FREE CLE
OCTOBER 13-14, 2021

Wednesday, October 13

11:00 am - 11:15 am
Opening Remarks

11:15 am - 10:15 pm
Confessions in Sexual Assault Cases
Lisa Wane
The Law Office of Lisa M. Wane

12:15 pm - 1:15 pm
Forensic Interviewing in Sexual Assault Cases
Nick Canto
Forensic Consulting

1:15 pm - 1:45 pm
Lunch

1:45 pm - 2:45 pm
Voir Dire in Sexual Assault Cases
Eric Davis
Harris County Public Defender's Office

2:45 pm - 3:45 pm
Cross-Examining the SANE nurse
Jed Silverman
The Law Office of Jed Silverman.

3:45 pm - 4:00 pm
BREAK

4:00 pm - 5:00 pm
Cross-Examining the State's Experts
Dr. Michael Brannen
The Institute for Behavioral Science and the Law

Thursday, October 14th

11:00 am - 12:00 pm
DUI and DWI
Sean Darvishi
The Law Offices of Sean Darvishi

12:00 pm - 1:00 pm
Search Warrants
Natalie Ware
Harris County Managed Assigned Counsel

1:00 pm - 1:30 pm
LUNCH

1:30 pm - 2:30 pm
Gangs
Monique Sparks
The Sparks Law Firm

2:30 pm - 2:45 pm
BREAK

2:45 pm - 3:45 pm
Confidential Informants
Jed Silverman
Quinones & Associates

3:45 pm - 4:45 pm
Collateral Consequences in Drug or DWI Cases
Leslie Ginnel
Harris County Public Defender's Office
Our division has experienced steady growth. Over the last several months, we have added some talented lawyers. And we are still hiring and adding people to our division. Last month we added a seventh intake team that is being led by Sherlene Cruz. Sherlene was promoted to Senior Litigation Counsel and stepped right into the role of supervising lawyers on Intake Team 7.

Even in the face of adding new people, the Felony Trial Division is still providing zealous defense of persons accused of crimes in Harris County, Texas. Our new additions have stepped right in and adopted the culture of the Felony Trial Division. Additionally, COVID-19 has not shaken us from our mission. When this pandemic began, our lawyers, sua sponte, reviewed their dockets and began securing pretrial release for many of their clients. Several clients were able to be released on personal bonds.

Moreover, every day the courthouse has been open, lawyers from the Felony Trial Division have been in the building defending clients. Our lawyers are still defending clients in court, still securing dismissals, still negotiating and taking pleas and still visiting clients who are in jail. Our investigators are still interviewing witnesses, still following up leads, still serving subpoenas and still doing scene investigations. Our administrative assistants are still helping out where needed. Many are quick to step up and volunteer to help out. As gold is tested by fire, this pandemic has shown what our staff is made of... solid gold.

For example, although being instructed to work from home, Randy Martin continually refuses to stay home and comes to work everyday the courthouse is open. He comes to work when the building opens, goes to the jail nearly every day to visit his clients and communicate offers, and emails ADAs about his client’s cases. Our lawyers have followed his example by putting their heads down and working hard through the Pandemic without complaint.

And our more computer savvy lawyers who are working from home are working up their cases and helping their colleagues with ideas about their cases. Just last week we had a case review via Zoom that was attended by over 20 members of our division. Numerous lawyers shared ideas about defending the cases being presented. Our lawyers learn from each other and support each other. We will continue to have case reviews via Zoom every week on Tuesdays.

Recognizing that we need to continue to get better as lawyers, our division is continuing our divisional in-house trainings. As they have always been, these trainings are organized by the Felony Trial Division Chief. We are now having trainings via Zoom each week. We frequently have presenters from across the country to make presentations to our lawyers.

While the scope of our subject matter has expanded, our trainings will continue to emphasize trial skills and dealing with issues we face in the Felony Trial Division.

Moreover, we have been providing separate training to our “Up and Coming Lawyers” at least twice a month. In addition to this training, these lawyers are mentored by their Team Leaders and by more seasoned lawyers in the Felony Trial Division. Our lawyers are also starting to try cases.

We are thankful for the work of our Administrative Assistants, our investigators, the social workers, Justice Advocates, Vicki George’s team in data entry people and the Lawyers in the Felony Trial Division who all work tirelessly and selflessly for our clients. And like everyone else in the office, we are grateful for the tireless work of Alex Bunin.
Friends of BARC is a 501c3 non-profit organization dedicated to the support of all homeless animals at Houston’s municipal shelter known as BARC Animal Shelter and Adoptions.

Our group was formed in 2003 and consists of eight board members, four of whom spend every weekend at BARC assisting with adoptions, animal behavior evaluations, marketing and financial support for the shelter.

We recently purchased a brand new digital x-ray machine for the shelter, breaking a 20-year drought without the ability to perform x-rays on all injured, pregnant and heartworm positive animals.

We also subsidize every single heartworm treatment for all adopters and fosters through a grant from Texas Capital Bank.

Our very own Chris Sailer and his wife Maeturah, who saved a Pitbull named Rumi in 2020 (just 30 minutes away from euthanasia), recently took advantage of Rumi’s heartworm treatment at BARC. Other PDO colleagues also count BARC cats and dogs as family members.

If you are interested in fostering or adopting, please see me and I’ll be sure to stock up your house with furry four-legged (and occasional three-legged) companions.

We offer curbside pickup as shown below!
Curtis Barton's Pugs
These two brothers (pictured left to right) are Biggie and Tupac. These pugs were rescues from Pugsheart. A lady surrendered them because she traveled for work almost weekly. They were named Biggie and Tupac, but pugsheart tried to rename them Abbott and Costello. As soon as we got them we went back to their real names. They are a bundle of joy and full of personality.

KNIT CLUB

JOIN US EVERY TUESDAY 12:30 PM
13th Floor
Main Conference Room

NO SKILL REQUIRED

Sometimes I do not even knit!

THE GOOD STUFF