



FOR *the* DEFENSE

February 2019

"Do not withhold good from those to whom it is due, when it is in your power to act."

Proverbs 3:27

Greetings from Joanna Salinas

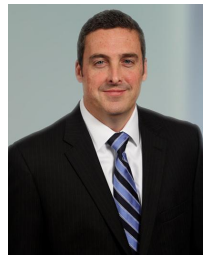
Valentine's Day is here. In the United States this is generally a celebration of romantic love, which is a wonderful thing to celebrate. However, I would encourage everyone to consider adopting or expanding the celebration to the way it's done in a number of Latin American countries. In some countries, Valentine's Day is known as Día del Amor y la Amistad: Day of Love and Friendship. In addition to showing appreciation for your romantic love, it is common for people to perform "acts of appreciation" for their friends. Technology and social media have shifted who and how we define "friends," and we rarely take the time to value those who mean the most. Take a moment to consider and appreciate the significant people in your life - be that your romantic interest, family, friends or colleagues. At Fletcher Farley, we take pride in the meaningful relationships we have developed with each of you. On this Dia de la Amistad, we thank you, our friends, for the relationships and opportunities.



Criminal Record - Big Deal or No Big Deal?

Derreck Brown

You just found out a claimant has a prior criminal record. Before you get too excited, however, remember that just because a person has a criminal record does not necessarily mean that the jury will ever hear about it. The court must go through an analysis to determine whether a criminal history will be admissible.



To begin with, generally, only convictions are admissible to impeach someone's credibility. A list of arrests, which all end in dismissals, while sounding ominous, are unlikely to go before a jury. Also, confirming the arrest did end in a conviction is not the end of the analysis. Rule 609 of The Texas Rules of Evidence says a person's prior conviction must be: (1) a felony; or (2) a crime involving moral turpitude, and the probative value of the evidence must outweigh the prejudicial effect.

So what is a crime of moral turpitude? Texas courts generally

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Welcome to the latest edition of Fletcher Farley's Newsletter, which we hope you find interesting and helpful.

If you have any comments, questions or would like more information from us, please contact Doug or Joanna.

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SAVE THE DATE



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Texas Law Update 2019

consider a crime of moral turpitude to involve any crime showing you are untrustworthy or dangerous. Texas courts have considered these types of crimes to include selling narcotics, theft, fraud, forgery, blackmail, and assault. The Texas Supreme Court has found that drug possession, whether felony or misdemeanor, is not a crime of moral turpitude. Also, courts have held that misdemeanor DWI, which we tend to see more than others, is not a crime of moral turpitude.

The court will also look at how much time has passed. Rule 609 sets a higher bar for admissibility if it has been more than ten years since the later of a person's conviction or release from confinement. In that situation, such evidence will only be admitted if the probative value substantially outweighs its prejudicial effect, and such evidence must be supported by specific facts and circumstances. For example, if a claimant driver got out of prison fifteen years ago for felony DWI and there was no evidence in that alcohol had anything to do with the current case, we would have a very difficult time convincing a judge to admit that.

We recently represented a defendant driver involved in a bad commercial trucking accident. The driver had been released from prison eight years before the accident for felony drug possession. However, he had undergone numerous drug tests from his employer, including one just after the incident and all of them were negative. Also, there was no evidence from any witnesses or the investigating officer that our driver was under the influence at the time of the collision. We argued to the judge that the prejudicial effect of discussing such a conviction outweighed any probative value it would have. That judge agreed with us, although it is not clear how a different judge in a different venue may have ruled.

Conflicts Resolved

Favorable Outcomes with OSHA

We pride ourselves in guiding clients through OSHA investigations and assisting clients in matters where OSHA may have overreached in issuing citations. Oftentimes, we are protecting clients from adverse OSHA findings in the lead up to separate civil litigation on injuries. Other times, we are simply working to keep our clients from having erroneous findings on their records with OSHA. We have recently been successful in having citations for two different clients completely dismissed.

CAL-OSHA recently issued a serious citation to our client for what they contended were material handling violations resulting in a partial amputation injury to our client's employee. CAL-OSHA issued the citation under a specific regulation applicable to stacking and storing of materials. Our client contested the citation, and in advance of the hearing retained our firm to appear on their behalf. With assistance from consultation with one of our safety experts, we identified a defense based in OSHA's reliance on an improper standard. We filed a notice of appearance and began negotiations with the CAL-OSHA area director. We were able to get the citation fully dismissed without the necessity of a hearing.

In a separate matter, OSHA issued a serious citation to another client for what OSHA contended was a trench safety violation identified as a part of a programmed inspection of a jobsite. OSHA took the position that a trench box was required given their documented observations on the trench depth. They contended that the excavation posed serious hazard to nearby workers. Our firm was retained after the citation was issued, with instructions to formally contest before the Occupational Safety and Health Review Commission. After reviewing separate evidence available through the client, we concluded that OSHA's position was not sustainable.

in Dallas on
Friday, April 26th, 2019
at the DoubleTree near
Campbell Centre!

If you came to the seminar last year, please make note **this is a different location.**

[REGISTER HERE!](#)

More information coming soon!

**Welcome
Meredith Livermore**



We welcome [Meredith Livermore](#) to the firm's Dallas office. She focuses her practice on commercial litigation, premises liability, catastrophic personal injury, transportation, products liability, and general liability litigation.

We requested an informal conference with the assistant area director in advance of formally contesting the citation. At that conference, we were able to demonstrate that OSHA's supporting evidence was deficient, and secured a dismissal in full without having to incur the time or expense of the formal contest.

OSHA citations can have significant ramifications for a company in terms of safety record, sanctions for repeat violations, and adverse evidence in future litigation. The two matters identified above demonstrate that not all OSHA citations are proper, and where improper, need to be properly challenged.

FLETCHER | FARLEY

THE
**TEXAS
LAW★UPDATE**
2019

DOUBLE TREE BY
HILTON DALLAS
CAMPBELL CENTRE
8:00AM – 5:00PM

**SAVE THE
DATE**

APRIL 26TH, 2019

WWW.FLETCHERFARLEY.COM

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