



# FOR THE DEFENSE

December 2017

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

Proverbs 2:27

## Greetings from Joanna Salinas

### Confessions from Your Type A Austin Attorney



I've been told I have a Type A Personality: someone who likes to be in charge and be in control of their environment and their lives. It's probably true. This is a trait seen regularly in the legal and claims arena and comes in handy as we try to convince opposing parties, counsel, judges and juries to see the facts and the law the way we see it. A family health scare over Thanksgiving was a wake-up call for me as to how little we actually control when it comes to the things that are really important. As 2017 comes to an end, I'm going to try to focus some attention on the things that I can control: what I did right in the past year and what I'm going to work on in the year to come, and I would encourage you to do the same. I would also ask for any feedback you can offer Fletcher Farley - what we do right, and what you would like to see us work on in the coming year. We can't control everything (although I'm not sure I can stop trying). What we can control is the knowledge, skill, preparation and determination that we put into every matter that we handle, and we will be going into 2018 ready to give you 100%. We appreciate you making Fletcher Farley part of your lives in 2017, and we look forward to being a part of your 2018. Happy Holidays to you and yours from your Type A Attorney in Austin, and from the entire Fletcher Farley family.

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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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# Mediation: Constant Evolution

## Gene Rhee



As we are all aware, most matters in litigation are never tried. Rather, most cases are settled, and most are settled by way of mediation. In the last half-century, mediation has emerged as the predominant form of alternative dispute resolution in the United States. Indeed, most courts in Texas require that parties submit to mediation as a prerequisite for trial. In North Texas, mediation began to take its foothold in the early 1990's. While the purpose of mediation-to assist parties in coming to a mutually agreeable resolution to a dispute-remains constant, over the course of time, the process by which this purpose is fulfilled has evolved and indeed continues to evolve.

Before the turn of the new century, it was not uncommon that a mediation would last many hours, often concluding in the late evening hours. Further, we've likely heard how these marathon mediations had associated peculiarities: the climate control setting being slightly off-enough to make it uncomfortable; or the absence of meals for those mediations pushing into the night. While it may be that a weary, hungry and uncomfortable person is more susceptible to being persuaded, marathon mediations appear now to be less the norm.

Mediations can be shorter because there's been a shift with how parties' approach the opening. It used to be that the opening was the opportunity for the parties, or their attorneys, to communicate directly to the opposing party-to tell them about your strengths and their weaknesses. Now, it's not uncommon for the opening to consist of a simple exchange of pleasantries and perhaps a few words from the mediator as to expectations regarding the process. Frankly, while there are always exceptions, the latter is often preferable. A truncated opening, or its elimination altogether, allows for the parties to get right to business. More importantly, without the opening session where each party is trying to tell the other how bad their case is, there is less chance that the parties will retreat to their respective caucuses fuming and needing an hour just to vent and calm down. Not only do parties need to be present at mediation, they need to be in the right frame of mind to maximize progress-why set yourself back with a potentially counterproductive opening? Any message can be delivered just as, if not more, effectively by the mediator.

The mediator's role has evolved as well. Understanding that each mediator has his own style and tendencies, generally, mediators now are taking a much more active part in

## Craig Reese Presented at the Dallas Bar Association



[Craig Reese](#) was co-presenter at the Dallas Bar Association's Tort & Insurance Practice Section on "Don't Worry, It's Personal: An Analysis of Personal Lines Insurance Coverage" on Tuesday, December 5th at noon.

## Honoring 25 Years with 25 Acts of Kindness

### Christmas Providers



Terha Hooker; Paul Bennett; Abby Golman; Janet Smith; Tara Peck; Karen Langston(L-R)

The Dallas office donated canned and dry goods to Christmas Providers. They assist Birdville ISD families with a full box of food to help them get thru the 2 week break in December.

### Caritas of Austin's Pantry

The Austin office got together to donate food to Caritas of Austin's Pantry. They provide meals to families in Austin. To learn more, please [click here](#).

facilitating resolutions between parties. As opposed to just passing the numbers back and forth, good mediators push on both parties and often times, work with the parties after and even between mediations-as the process is very often no longer confined to a single setting. It is not uncommon for cases to be mediated twice, or even three or more times. Regardless of the length or number, during the mediation process, many mediators, in addition to trying to bring the parties together, are also working to try to determine where each party is willing to end up. More and more lately, if the mediator has seen enough progress during the mediation, or if the parties request, the mediator will issue a proposal of what he believes is an amount to which both parties can agree to settle. Despite the fact that the proposal, which usually requires response within around a week's time, will obviate the possibility of the parties leaving the mediation with an agreement in place, this option still has proven to be an effective final step in facilitating settlement.

Because of (or in spite of?) these and countless other ways in which the process has evolved over the years, mediation continues to remain the most effective vehicle for achieving settlement, i.e., disposing of suits and closing files. If you have any questions or would care to discuss further, whether regard to a specific matter or in general, please contact our firm.

## Conflicts Resolved

### **Fletcher Farley Successfully Defends Against Summary Judgment Appellate Attack**

By memorandum opinion issued on November 22, 2017 by the San Antonio Court of Appeals, [Richard Miller](#) and [David Colley](#) were successful in upholding the trial court's summary judgment in favor of our client in an alleged aggravated assault with a motor vehicle outside the main entrance of the San Antonio Airport Hilton Hotel that resulted in injuries to the plaintiff, an airline flight attendant. Like the trial court below, the Court of Appeals held that the plaintiff's alleged aggravated assault with a motor vehicle, a violent personal crime, was not foreseeable based on previous violent crimes at the hotel in the two years preceding the alleged incident. In fact, the evidence showed only one violent crime-an alleged sexual assault inside the hotel-in the two years preceding the plaintiff's alleged aggravated assault. The Court of Appeals rejected plaintiff's attempt to introduce evidence of violent crimes that occurred within a one-mile and one-half-mile radius of the hotel as immaterial to the hotel's relevant criminal history, which was limited to the hotel and its immediate vicinity pursuant to controlling Texas Supreme Court authority. The San Antonio Court of Appeals accordingly affirmed the trial court's summary judgment order in favor of the hotel. *Flanagan v. RBD San Antonio L.P., et al.*, 2017 WL 5615567 (Tex. App.-San

### **National Multiple Sclerosis Society**

We were proud to participate in Giving Tuesday, November 28th, by supporting the National Multiple Sclerosis Society. They are working to accelerate breakthroughs that will change the world for people with MS.

### **Leukemia & Lymphoma Society (LLS)**

We are proud to support a friend of the firm who ran in the Dallas Marathon on December 10th. He ran with a relay team to raise funds and awareness for the L L S in honor of a friend.

### **Congrats to Evan and Alex Farris**

Congratulations to Evan and Alex Farris on the birth of their baby girl. Evan is an associate in Mike Shipman's group and is excited to welcome his first child.

### **Congrats to Doug and Jan Fletcher**

Congratulation to Doug and Jan Fletcher on the birth of their second grandchild.

Antonio Nov. 22, 2017, n. pet. h.).

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