



"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

Somehow Thanksgiving is around the corner. One of the oddest traditions is the annual Presidential pardoning of a turkey. While his compatriots will be headed to the dining room table, one lucky bird gets to live out the rest of his days at Mount Vernon. Perhaps there's a lesson in there for us all: how simple to just decide to give someone a pass...even ourselves. Despite things looking brighter, more people working and getting on with "normal" life activities/less people sick, it's easy to feel down about what other people could be doing better, and what we could be doing better too. This is especially true in the litigation world that we live in, where blaming other people is the name of the game. I propose a "pardon" for those we love, and those we don't, and including ourselves, for whatever didn't work out this year the way we wanted. This Thanksgiving, take a moment to be thankful for all you do have and resolve to improve upon it in the coming year. We here at Fletcher Farley are certainly thankful for all of you and wish everyone a safe and Happy Thanksgiving.



## Congrats Doug Fletcher



[Doug Fletcher](#) has been accepted for membership in the Federation of Defense and Corporate Counsel (FDCC).

Since 1936, the FDCC has recognized leaders in the legal community who have achieved professional distinction.

Candidates are nominated for membership and subjected to a peer review process before being invited into the organization.

## When is Criminal History Admissible

by Kevin Niknam

You just learned that your driver has a prior conviction for domestic violence. Or that the claimant has a

## Events

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robbery conviction. Is this information going to be admissible to the jury, even though the conviction has nothing to do with the incident at issue?



Texas law recognizes that this evidence can sometimes come in as proof the witness is not credible. The jury can learn about the conviction because (in theory) a person who has done “x” might be less trustworthy.

The Rule that allows for this is Texas Rules of Evidence, Rule 609(a). It generally states that “Evidence of a criminal conviction offered to attack a witness’s character for truthfulness must be admitted if: (1) the crime was a felony or involved moral turpitude, (2) the probative value of the evidence outweighs its prejudicial effect to a party, and (3) it is elicited from the witness or established by public record.”

Thus, there is no admissibility unless the criminal conviction is for a felony or a crime involving moral turpitude. While it’s fairly easy to classify a felony within a specific jurisdiction, defining a crime of moral turpitude is less straight forward. Historically Texas courts have found that crimes involving dishonesty, fraud, deceit, misrepresentation, deliberate violence or that reflect adversely on a person’s honesty or trustworthiness meet the definition of a crime involving moral turpitude.

Texas courts have specifically found the following to involve moral turpitude: sexual assault of a child; lying to a police officer; mail fraud; tax evasion; prostitution; purchase of a child; indecent exposure; fraud; public lewdness; sale of narcotics; conspiracy to bribe a public official; murder; and indecent exposure. This list is by no means exhaustive but offers a general roadmap as to how most Texas courts will classify a specific crime. Driving under the influence, as long as it was a misdemeanor charge, is not.

Next, the conviction or release from confinement must have been within the last 10 years for it to be automatically admissible for the purposes of attacking one’s character for truthfulness. If it is more than 10 years, then there must be a showing to the court that the importance of admitting the conviction into evidence is far greater than any potential prejudicial effect of the jury having knowledge of it. In determining whether the probative value of a conviction outweighs its prejudicial effect, the court considers the following nonexclusive factors: (1) the prior conviction’s impeachment value; (2) its temporal proximity to the charged offense and the

## THE TEXAS LAW★UPDATE 2021

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### Congratulations!

#### Four Attorneys Named to 2021 Texas Super Lawyers List

We are proud to announce the selection of [Doug Fletcher](#), [Lane Farley](#), [Joanna Salinas](#) and [Steve Springer](#) to the 2021 Texas Super Lawyers list, recognizing no more than five percent of attorneys in Texas.



#### Three Attorneys Recognized in 2022 Best Lawyers in America

[Doug Fletcher](#), [Lane Farley](#) and

witness's subsequent history; (3) the similarity between the prior offense and the present offense being prosecuted; (4) the importance of the defendant's testimony; and (5) the importance of the credibility issue.

We have a case where the Court recently granted our motion to keep out our driver's felony drug trafficking conviction. It had been 10 ½ years since he was released from prison. The court agreed that the facts weighed against admissibility: not at all related to the vehicle accident and too prejudicial.

So, the next time you learn about a party or witness's criminal history, now you know how the court will analyze its admissibility when offered just for impeachment.

## Conflicts Resolved

### Fletcher Farley Obtains Summary Judgment in a Wrongful Death Case

Congratulations to [Julia Sinor](#) and [David Colley](#) for their Motion for Summary Judgment win in a wrongful death case! The decedent died in an accident when his motorcycle became tangled with a fallen, inactive utility line. Neighbors, the Defendant, and the patrolling police were not aware that the line had fallen prior to the accident, and it was not clear that the Defendant owned or controlled the line. Julia and David argued that Plaintiffs could not meet their burden to show Defendant had notice as required in a premises-liability case. Based on recent case law, Plaintiffs' attorney argued that they did not have to show the Defendant had notice prior to the incident, because the case should be decided under general negligence principles. Julia and David argued the recent case law was distinguishable, but also argued Plaintiffs could not meet their burden on elements common to all negligence claims: causation and breach of the standard of care. The Court agreed and granted summary judgment as to all of Plaintiffs' claims.

[Jeff Smith](#) deserves kudos as well, for his great work conducting a rapid response in the days following the accident. His early investigation, interviews, and evidence gathered paid off, and ultimately led to this win!

### Fletcher Farley Obtains Summary Judgment in Personal Injury Case

[Kristi Kautz](#) and [Iris Harris](#) recently obtained a summary

[Mike Shipman](#) were recognized in the 2022 edition of The Best Lawyers in America®. Since it was first published in 1983, Best Lawyers has become universally regarded as the definitive guide to legal excellence.



## Texas Law Update in Dallas

Thank you to everyone who came out to our first post-pandemic TLU in Dallas on Friday, October 29th. It was really nice to see everyone in person.

Below are a few pictures from the seminar:



Above is our crew from the office getting attendees registered and passing out our materials.



Joanna Salinas is always a favorite speaker. She spoke with Derreck Brown on the topic of Wrongful Death Claims.



judgment in the Northern District of Texas in a personal injury case where the Plaintiff alleged significant injuries and damages. As part of the thorough strategy evaluation that is a hallmark of Fletcher Farley's defense of our clients, Kristi discovered that the Plaintiff had an active bankruptcy case where she had failed to list her claim against our clients as an asset as required by the bankruptcy code. Kristi and Iris prepared a Motion for Summary Judgment based on the argument that Plaintiff's failure to identify the claim meant that she was judicially estopped from asserting it against our clients; i.e., that she could not tell the bankruptcy court (under oath) that she had no claim and then try to assert the claim in a separate lawsuit. The Court agreed with us and granted the Motion for Summary Judgment, dismissing Plaintiff's suit against our clients with prejudice. Fletcher Farley's thorough case evaluation and strong motion resulted in this conflict being resolved in our client's favor even before the suit progressed to the discovery phase.

## Fletcher Farley Obtains Summary Judgment on Negligence Claims

[Karen Kennedy](#) and [Richard Harwell](#) obtained a summary judgment on negligence claims arising out of a motor vehicle accident in Ellis County, Texas. The Plaintiff and her three minor children suffered injuries as a result of an accident on US Highway 287 in an area where construction was ongoing. Plaintiff alleged that the defendant was negligent in failing to follow a proper traffic control plan and failing to provide reasonable notice to motorists of lane closures. On the morning of the summary judgment hearing, Co-Defendant filed a contribution claim against Defendant. We filed a summary judgment on Plaintiffs' claims alleging that it was not the entity working on the highway at the time of the accident. A second summary judgment was filed on the Co-Defendant's contribution claim. Co-Defendant filed multiple motions attempting to keep Defendant in the lawsuit including a Motion for Continuance and a Motion to Compel Depositions. After a hearing on September 29, 2021, the Court signed multiple orders granting summary judgment on Plaintiffs' negligence claims, granting summary judgment on Co-defendant's contribution claim, denying Co-Defendant's motion for continuance and motion to compel depositions. In addition, the Judge drafted an opinion walking through the reasoning for his rulings.



With all the great topics and speakers ... the star of the show might have been the churros.

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