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TESLAW

**THE STATE BAR OF TEXAS
ENTERTAINMENT & SPORTS LAW SECTION**

January 24, 2018

TESLAW Tidbits:

A Little Taste of TESLAW

January 24, 2018

Issue No. 27

Dear TESLAW Members,

Happy New Year!

I hope everyone had a great holiday season and is looking forward to the New Year. Whether or not you are one to make New Year's resolutions, you can still resolve to make the best of the New Year in your sports or entertainment law practice. Sometimes it's all about simply laying the groundwork for years to come.

Resolve to keep on the lookout for new opportunities, wherever they might be and no matter how long-term they might be: the high school athlete just starting to come into his or her own; the kid making movies with his smart phone; the junior high student writing stories for her family and friends; the garage band that keeps the neighbors up at night.

Remember that today's neophyte may be tomorrow's superstar, looking for an agent or lawyer: the All-Pro football player, the Oscar-winning director, the New York Times bestselling author, the Grammy Award-winning singer. Their opportunities can become your opportunities if you keep your eyes, ears, and minds open – and are willing to cultivate the future, not just harvest the present.

Best wishes for the New Year.

Sincerely,

Mike Farris, Chair

[Entertainment and Sports Law Section](#)

Events Calendar

SXSW Mixer 4-6 p.m. March 15th at the Iron Cactus, 606 Trinity St., Austin, on the Mezzanine level

Spotlight on Dena Weaver



Dena is a bankruptcy, litigation, and entertainment attorney based in Arlington. Her practice covers a variety of matters, including Chapter 7 and Chapter 13 bankruptcies, business litigation, and representation of entertainment clients in production, bands, and authors.

Dena is the Immediate Past Chair of the Dallas Bar Association's Entertainment, Art & Sports Law Section, and the Secretary of the Texas Bar Association's Entertainment & Sports Law Section. She also is serving as one of the assistant newsletter editors for the Texas Bar Association's Entertainment & Sports Law section.

Dena is finishing her first book, *Island Malaise*, and hopes to publish by the end of this year. She also is working with a startup company focused on marketing of books.

Defamation Mitigation Act Can Extend Deadlines Under the Texas Anti-SLAPP Statute

By Brent Turman

A Texas appellate court recently decided a case of first impression regarding the deadlines under the Defamation Mitigation Act (“DMA”) and Texas’ Anti-SLAPP statute, the Texas Citizens Participation Act (“TCPA”). While this is not the sexiest legal topic, these deadlines are important to remember when representing clients, who are either in the media, or who otherwise possess the habit of publicly making their opinions known.

The case stems from a lawsuit between a bar and Houston media outlets, who issued reports of a crime at said bar. It all started after a March 2016 shooting in Houston. A Houston Police Department representative stated that the shooting occurred at a bar on a specific street, that the victim was a musician, and the gunman a bar owner. In the following days, the Houston Chronicle and local Houston television station KHOU-TV published news articles essentially repeating these details issued by a police department representative. The articles reported a shooting took place outside the Status Lounge, a Houston bar, and further repeated that the victim was a musician scheduled to perform at that bar, and that the owner of the bar was the gunman. Status Lounge took issue with these reports, because the allegations and statements made by the police department’s representative turned out to be false. While it was true the victim was a musician, the gunman was not the owner of Status Lounge and the location of the shooting was at a liquor store near the Status Lounge, not the bar itself.

Status Lounge proprietors believed the false publications damaged its business and a few months later, the bar filed suit against the media defendants and also sent a letter to KHOU, demanding it correct its earlier erroneous report. In response to Status Lounge’s demand, KHOU indicated that it relied on information from the police, but that it would like to correct any incorrect facts. Since the demand came at the same time the Status Lounge filed its lawsuit against KHOU, the media company also had to respond to that filing. Accordingly, it filed a plea in abatement, arguing the Status Lounge did not file a timely or sufficient request for retraction under the Defamation Mitigation Act. See Tex. Civ. Prac. & Rem. Code § 73.052.

Under the DMA, a plaintiff must request a retraction during the one-year statute of limitations period applicable in a defamation claim. The statute also mandates that this request provide particular details and allegations as specifically laid out in the DMA. See Tex. Civ. Prac. & Rem. Code § 73.055(d). Generally, the plaintiff cannot recover exemplary damages if (1) he does not properly make this request within 90 days of receiving knowledge of the publication, or (2) a correction, clarification, or retraction is made, whether it’s

done voluntarily or at the plaintiff's request. See Tex. Civ. Prac. & Rem. Code §§ 73.055(c), 73.059.

The trial court granted KHOU's plea. Pursuant to the DMA, this abated, or tolled, all statutory and judicial deadlines. After the sixty-day abatement period ran, the defendants filed a Motion to Dismiss under the TCPA. This statute provides defendants like KHOU with a unique opportunity to dispose of lawsuits designed to chill First Amendment rights at an early phase. Under the TCPA, the defendant first must show that the claim is based on, related to, or in response to defendant's exercise of the right of free speech, right to petition, or right of association. TEX. CIV. PRAC. & REM. CODE § 27.003. If the defendant can make that showing, then the plaintiff must establish by "clear and specific evidence" a prima facie case for each essential element of its underlying claim. § 27.005. If the plaintiff can overcome that hefty burden, then the defendant has another opportunity to dismiss the case by establishing each essential element of a valid defense. *Id.*

A party seeking protection under the TCPA must move quickly, as it must file its motion to dismiss within 60 days of receiving notice of the lawsuit against it, unless it can show good cause for an extension of this 60-day deadline. *Id.* at § 27.003(b). In this case, the media defendants filed their respective motions to dismiss under the TCPA after the statutory deadline, and, as a result, the Status Lounge argued that the motions were untimely. The trial court agreed with the bar.

In the ensuing interlocutory appeal, the appellate court disagreed, finding that since the trial court abated the lawsuit, the defendants' motions to dismiss under the TCPA fell within the statute's 60-day deadline. See *id.* at § 27.003. Next, the court looked to the purpose of the two statutes at issue. It reasoned that the DMA's purpose is to promote early resolution of defamation lawsuits by enabling a defendant an opportunity to mitigate any perceived damages. *Hearst Newspapers, LLC v. Status Lounge, Inc.*, Cause No. 14-17-00310-CV, at 17 (Tex. App.—Houston [14th Dist.] Dec. 19, 2017). The purpose of the TCPA, on the other hand, is to encourage and safeguard certain Constitutional rights while simultaneously protecting a party's right to file meritorious lawsuits for demonstrable injury. *Id.* The court concluded that Texas lawmakers intended these two statutory schemes to work in harmony to protect a defendant's First Amendment rights, while also limiting the use of judicial resources and facilitating early resolution of disagreements regarding such speech when possible. *Id.* The appellate court reversed the trial court's decision and remanded the case for the trial court to consider the Motion to Dismiss under the TCPA. *Id.* at 20-21.

This decision of first impression is important for lawyers who may have the opportunity to use Texas' Anti-SLAPP law in order to protect their clients who find themselves in court due to exercise of their Constitutional rights. That being said, while the Fourteenth District Court of Appeals in Houston found that the abatement under the DMA effectively added sixty days to the statutory deadline to file a motion to dismiss under the TCPA in this specific situation, the safest practice would be to file a motion to dismiss under the TCPA within 60 days of the client being served in the legal action.

Brent Turman's commercial litigation practice covers a variety of matters including business disputes, breach of contract, complex arbitration, construction, and intellectual property. In 2017, his peers recognized him as a Super Lawyers "Rising Star" for business litigation. Before beginning his legal career, Brent was an Associate Operations Producer for ESPN/ABC College Football. In the offseason, Brent produced commercials, industrials, in-arena entertainment, and music videos for clients throughout North America. Brent has continued to use this experience to assist clients in the Entertainment, Media and Sports industry by preparing and reviewing relevant contracts and navigating clients through business disputes and negotiations. Brent is also a former chair of the Dallas Bar Association's Entertainment, Art & Sports Law Section. Brent is an associate with Bell Nunnally's in Dallas, TX and can be contacted at [email](mailto:bturman@bellnunnally.com).

Practice Document

The [attached practice document](#) is an adaptable receipt form including work-for-hire language. This receipt form is provided by Al Staehely who is an entertainment lawyer based in Houston, Texas. He has specialized in legal matters pertaining to the music and film industries since 1979. His clients include musicians, record labels, music publishing companies, and distribution companies. He handles various matters related to recording, publishing, sub-publishing, and licensing both domestically and internationally. You may contact him by [email](mailto:alstaehely@alstaehely.com).

Send questions, comments, and submissions for TESLAW Tidbits by email to [Dena Weaver](#), Editor in Chief.

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