

HEINONLINE

Citation: 69 Tex. B.J. 316 2006

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Fri Sep 3 16:30:28 2010

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/ccc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=0040-4187](https://www.copyright.com/ccc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=0040-4187)



Why Can't Lawyers

Preserve Objections?

By Judge Randy Wilson

In the three years I've been on the bench, I've seen many amazing things. While I am certain I make mistakes and rule incorrectly on an almost daily basis, I am astonished at the number of occasions I see lawyers fail to preserve any objection to my rulings. Although this inability to preserve objections may help a trial judge maintain a good win/loss record on appeal, the clients are disserved. This article will highlight some of the most glaring instances of lack of preservation I see.

CONTINUED ON PAGE 318 ►

About to file under the Business Organizations Code? Lawyer's Aid Service can help.

The new Texas Business Organizations Code (TBOC) recodifies and amends the law that governs business entity filings and operation. Lawyer's Aid Service can help a Texas attorney with up-to-date filings and provide TBOC-compliant company outfits customized as the attorney directs.

Five-minute guide to the TBOC

A quick overview of the new Code, "The Five-Minute Guide to the TBOC," and other useful resources such as the popular "Client Interview Checklists" are available at www.LawyersAidService.com.

Instant Formation of your LLC or other business entity

From your instructions by fax, phone, or e-mail, Lawyer's Aid checks the availability of your name choices, drafts the formation to your requirements, expedites its filing, promptly contacts you with the new company's filing number, and mails the official documents. \$375 for corporation or LLC, including state fees.

Fax Instant Formation: You check the name, prepare and fax the formation to Lawyer's Aid for expedited filing. \$365 for corporations and LLCs, state fees included.

When "Instant" isn't needed: You check the name, draft the formation, and send it with prepayment. \$345 for corporation or LLC, state fees included.

Updated Deluxe Company Outfits

All Company Outfits have been extensively reworked to provide full TBOC compliance. Tax, ownership, close, and non-profit provisions are

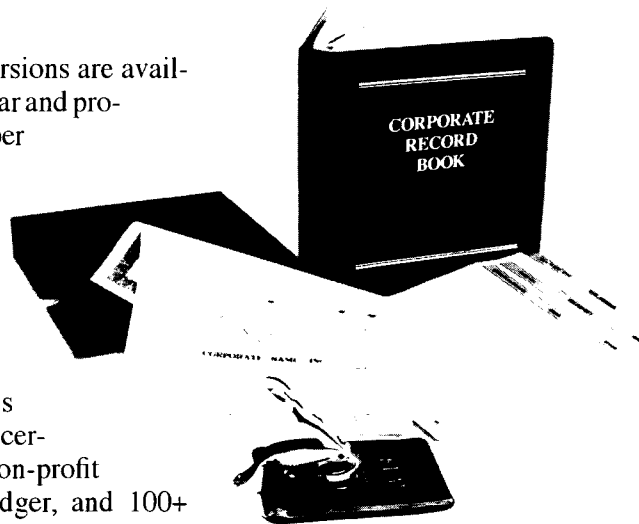
newly enhanced. Versions are available for LLCs (regular and professional, with member or manager control) as well as for corporations (for-profit, close, professional, and non-profit).

Inside the Outfit are the company's embossing seal, 20 certificates (except in non-profit Outfits), transfer ledger, and 100+ pages of forms on premium bond. The company name is emblazoned in gold on the binder's spine.

The Standard Outfit (\$54) comes with fill-in blanks. In the customized Deluxe Outfit (\$88), all text is custom-typed with your information seamlessly filled in. Any favorite custom clause you wish can be included and kept on file. Outfit prices include tax and UPS.

Professional registered-agent service

Lawyer's Aid understands the need for a company's registered agent to deliver a lawsuit to competent counsel as soon as possible. The Lawyer's Aid Quick-Alert System notifies you, the attorney of record, at once about served documents and sends them by scan, fax, and/or Fedex as you instruct. *\$120 a year; plus \$20 per service of process*



Expedited document filings and searches

Lawyer's Aid Service speeds filing and retrieval of records from state and federal agencies for business entities DPS notary and apostille court, appellate, and bankruptcy Railroad Commission UCCs birth, death many more. **New:** Filings and searches in other states and all Texas counties.

Most errands are \$20, the half-hour minimum, plus filing fees. Any additional quarter hours are \$10.

Lawyer's Aid
Service, Inc.

Lawyer's Aid Service

Call (888)474-2112

MainDesk@LawyersAidService.com

24-hr fax: (888)474-4218

Express deliveries:

408 West 17th, Suite 101
Austin, Texas 78701

U.S. mail:

P.O. Box 848
Austin, Texas
78767-0848

Instant Formations
Registered Agent Service
Company Outfits
Documents filed and
retrieved at
state, county,
and federal
agencies TM

◀ CONTINUED FROM PAGE 316

Voir Dire

Although every jury trial I have presided over has contained at least one motion I have denied to strike a veniremember for cause, I have only seen one lawyer preserve the objection. Only one.¹

If a trial court denies a motion to strike an objectionable veniremember, the moving party must take certain specific steps; failure to perform each step could well result in waiver of any objection. The two leading decisions on preservation of voir dire objections are *Hallett v. Houston Northwest Medical Center*² and *Cortez v. HCCI-San Antonio, Inc.*³ To preserve error when a challenge for cause is denied, a party must:

1. Use a preemptory challenge against the veniremember involved;
2. Exhaust its remaining challenges; and
3. Notify the trial court that a specific objectionable veniremember will remain on the jury list.⁴

The rule is similar in criminal cases.⁵

Thus, to preserve the error, you must use your preemptory challenges on the veniremembers previously challenged for cause.⁶ If your challenge for cause for a particular juror is denied, and you fail to use a preemptory strike on that person, you have waived error.

Additionally, you must inform the trial court of the specific veniremember that remained who you were unable to strike peremptorily because you exhausted all your other strikes. The good news is that *Cortez* held that you are not required to state why the remaining veniremember is objectionable. Indeed, in *Cortez*, the Supreme Court observed that the next "objectionable" juror could be picked at random.⁷ However, "the objecting party must do so before knowing who the opposing party will strike or who the actual jurors will be. If it 'guesses' wrong, any error is harmless."⁸ If the opposing party

or the court agrees to remove this "objectionable" veniremember, the objecting party does not get to object again to another veniremember who will be seated instead.⁹

Thus, when a trial court denies a motion to strike for cause, a party must strike the veniremember involved, use all six preemptory strikes, and then, prior to the jury being empanelled, make a record to the trial court, as, for example:

Your Honor, plaintiff again moves that veniremember #6 be struck for cause, or, alternatively, that plaintiff be given an additional preemptory strike. Plaintiff was forced to use a preemptory strike on veniremember #6, thereby exhausting plaintiff's preemptory strikes. If the court had stricken veniremember #6, or, alternatively, given plaintiff an additional preemptory strike, plaintiff would have struck veniremember #7, who is objectionable to plaintiff.

This should preserve the error.

Summary Judgment Objections

One of the most common preservation mistakes I see occurs at the summary judgment stage. On more occasions than I can remember, lawyers have merely objected to their opponents' summary judgment evidence and blithely assumed that the objection is preserved so long as they've filed formal objections. Nothing could be further from the truth. Failure to get a ruling on the objections is often fatal.

If your opponent files an affidavit in opposition to your motion for summary judgment, you of course must object.¹⁰ In general, you must:

1. File objections in writing;¹¹ and
2. Be specific so as to enable the opposing party to remedy the defect, if possible.¹²

Merely filing the objection, however, is not enough. As a general rule, the trial court must overrule the objection in order for the objection to be preserved on appeal.¹³ An order must be reduced to writing, signed, and entered of record; a docket sheet entry is insufficient.¹⁴ Indeed, even if the summary judgment hearing is transcribed, an oral ruling on the evi-

OUR SEARCH CAPABILITIES KNOW NO LIMITS

We have the resources and expertise to locate missing heirs, when other firms may fail. That is why law firms and trust institutions have relied on us for nearly four decades.

**INTERNATIONAL
GENEALOGICAL
SEARCH, INC.**
With just one call.

1-800-one-call
www.heirsearch.com

dence objections is insufficient.¹⁵

Not all objections are waived by the failure to object or failure to obtain a ruling on the objections. Defects in the *form* of summary judgment affidavits or attachments must be objected to and ruled upon. In contrast, however, *substantive* defects cannot be waived by failing to object or obtain a written order in the trial court.¹⁶

Form defects, which must be objected to and ruled upon, are:

- Affidavit contains hearsay;¹⁷
- Affiant not competent to testify to matters set out in the affidavit;¹⁸
- Documents attached to the motion for summary judgment not verified, certified, or otherwise authenticated;¹⁹
- Attachments to affidavits not certified or authenticated;²⁰
- Evidence attached to brief in support rather than summary judgment motion itself;²¹ and

- Affidavit not based on personal knowledge of affiant.²²

Substance objections, however, are not waived, either by lack of objection or ruling. Those defects are:

- Affidavit is unsworn or lacks properly notarized signature;²³
- Affidavit is not signed by affiant;²⁴
- Affidavit contains conclusions and unsubstantiated opinions;²⁵ and
- Verified pleadings relied on as summary judgment proof.²⁶

Substance defects are said to go to the very heart of the summary judgment proof and, therefore, neither an objection nor a ruling is required.

Since form objections must be both raised and ruled upon, it is imperative that the trial lawyer obtain a ruling from the court. As one court put it, "without something in the summary judgment order or the record to indicate that the trial court ruled on the objections, we cannot con-

clude that the trial court implicitly sustained the ... objections to appellant's summary judgment evidence. Therefore, we hold that the evidence remains a part of the summary judgment record."²⁷

The only narrow exception to this requirement to obtain a ruling is an "implicit" ruling. Effective Sept. 1, 1997, the Texas Rules of Appellate Procedure were amended to permit a trial court's ruling to be either express or implicit.²⁸ A ruling is implicit if it is unexpressed but capable of being understood from something else.²⁹ There is a split in the courts of appeals concerning an implicit ruling. Some courts hold that the existence of objections and a recitation in the summary judgment order that the trial court reviewed all competent evidence creates an inference that the trial court implicitly sustained objections to the summary judgment evidence.³⁰ The majority of decisions, however, hold that



TASA: The Best Source For Your Next Expert

Since 1961, TASA has been the leading source for Testifying and Consulting Experts for Accident, Computer, Construction, Insurance, Intellectual Property, Machinery, Medical Device, Oil and Gas cases – and much more.

- More than 10,000 categories, including 900 Medical specialties from TASAMed
- Local and national experts who match your criteria
- Prompt customized referrals, resumes, and your initial phone interviews with experts



800-523-2319

experts@tasanet.com • www.tasanet.com

Amarillo 806-372-7945 • Austin 512-473-2406
Dallas/Fort Worth 214-742-8178 • El Paso 915-533-9934
Houston 713-227-5056 • San Antonio 210-225-2462

MORE EXPERTS • MORE OPTIONS • MORE PERSONAL SERVICE

the mere fact that summary judgment was granted is insufficient to create an inference that the trial court ruled on the objections to the summary judgment evidence.³¹ The bottom line is that you should get a ruling on your summary judgment evidence objections and not take a chance trying to argue that the objection is one of substance or there was an implicit ruling.

Offers of Proof

How many times have we all seen this exchange?

Q: What did he say to you?

Opponent: Objection — calls for hearsay.

Court: Sustained.

The questioner then moves on to another subject and assumes that he has a potential point of error on appeal. In fact, he has preserved nothing. Unfortunately, most lawyers don't even know that they

are required to make an offer of proof if their evidence is excluded, much less know how to do one.

The rules are very simple. If your evidence is excluded, to preserve any error you must:

- Attempt during the evidentiary portion of the trial to introduce the evidence;
- If an objection is lodged, specify the purpose for which it is offered along with reasons why the evidence is admissible;
- Obtain a ruling from the court; and
- If the judge rules the evidence inadmissible, make a record, through an offer of proof, of the precise evidence you seek to have admitted.³²

The Rules of Evidence require that the excluded evidence affects a substantial right of the party and "the substance of the [excluded] evidence was made known to the court by offer, or was apparent

from the context within which questions were asked."³³

The party offering the evidence must state the purpose of the offer and the reasons why the evidence is admissible.³⁴ The arguments for admissibility asserted at trial must be the same as the arguments on appeal; otherwise, the issue is not properly preserved.³⁵

Most important, if the trial judge refuses to admit the evidence, there must be an offer of proof describing in some detail the nature of the evidence you wish admitted.³⁶ The primary purpose of the offer of proof is to enable an appellate court to determine whether the exclusion was erroneous and harmful.³⁷ A secondary purpose is to permit the trial judge to reconsider the ruling in light of the actual evidence.³⁸ But, when the trial court excludes evidence, failure to make an offer of proof waives any complaint about the exclusion on appeal.³⁹

This offer of proof can be either formal or informal, and can be made by the lawyer in the form of a summary. Thus, bench conferences⁴⁰ or fragmentary testimony⁴¹ might preserve any objection if there is enough substance to appraise the court of the nature of the testimony sought to be admitted.

Ideally, the offer of proof should state, for example:

Your Honor, outside the presence of the jury, plaintiff would make the following offer of proof. Mr. Jones, had he been allowed to testify, would have stated that he was told by defendant that the light was red. This is admissible as an admission against interest by a party opponent, and is offered to demonstrate negligence by the defendant. Plaintiff renews his request that Mr. Jones be allowed to give this testimony.

This will preserve your objection.

Motions in Limine

Everyone knows that a ruling on a motion in limine doesn't preserve any argument on appeal. Yet, I cannot tell you how many times I hear motions in limine arguments for hours, I grant the motion in limine and rule that the evi-



TCS-LibertyLegal.com

Producing Quality Corporate Kits & Supplies For Over 25 Years



Easy Online Ordering

Same Day Service*

Accurate

Reliable

We also offer:
Will Supplies
Notary Supplies
Tabbies
Stamps



Liberty Legal

Contact Our friendly sales staff at:
Ph 713-946-0141 or 800-392-3720
Fx 713-946-2789 or 800-441-7134
Email: sales@tcs-libertylegal.com

*orders received by 1pm cst

PO Box 12695, Houston, TX 77217 or 602 State Street, So Houston, TX 77587

dence cannot be admitted without approaching the bench first, and I never hear about it again.

A complaint of improperly excluded evidence cannot be predicated on a trial court's ruling in limine.⁴² An in limine ruling is not a ruling on the admissibility of evidence and does not preserve error.⁴³ Rather, the in limine ruling merely prohibits references to certain issues without first obtaining a ruling outside the presence of the jury.⁴⁴

If a motion in limine has been granted, to preserve error, the party wishing to introduce evidence must (1) approach the bench and ask for a ruling; (2) formally introduce the evidence; and (3) obtain a ruling.⁴⁵ If the court rules that the evidence is inadmissible, then the proponent must make an offer of proof.

Running Objections

I often see lawyers timely object to the introduction of certain evidence, and after they're overruled, give up and quit making any additional objections, either to that witness or any other witness. This again constitutes a waiver.

Any error in admitting evidence is cured if the same evidence comes in elsewhere without objection.⁴⁶ There are two exceptions to the "contemporaneous objection" rule: (1) the "running" or "continuing" objection rule; and (2) an objection outside the presence of the jury under evidence rule 103(a)(1).⁴⁷ The latter rule provides:

When the court hears objections to offered evidence out of the presence of the jury and rules that such evidence be admitted, such objections shall be deemed to apply to such evidence when it is admitted before the jury without the necessity of repeating those objections.⁴⁸

If the evidence is offered outside the presence of the jury, the objecting party can rely on Rule 103(a)(1). However, if the evidence is offered before the jury, then the opposing party must either object each time it is offered, or obtain a running or continuing objection.

Running objections, however, can be

tricky. If the court permits a running objection to a particular witness's testimony on a specific issue, the objecting party is entitled to "assume that the judge will make a similar ruling as to other offers of similar evidence and is not required to repeat the objections."⁴⁹ However, running objections are usually limited to similar evidence from the same witness.⁵⁰ A running objection ordinarily "does not preserve error when another witness testifies to the same matter without objection"⁵¹ although some courts have held that in limited circumstances a running objection can preserve error for different witnesses.⁵² Given these conflicting rulings, one court has held that the determination of whether a prior objection is sufficient to cover a subsequent offer of similar evidence requires a case-by-case analysis, based on the following considerations: the proximity of the objection to the subsequent testimony; the nature and similarity of the subsequent testimony as compared to the prior testimony and objection; whether the subsequent testimony was elicited from the same or a different witness; whether a running objection was requested or granted; and any other circumstances which might suggest why the objection should or should not have to be reurged.⁵³

Rather than rely on these various factors, the better practice is to request a specific running objection from each witness. For example, after the initial objection is overruled, state:

Your Honor, I request that you grant a running objection as to all testimony from Mr. Smith concerning what was said at the April 1 meeting (and repeat that request with each subsequent witness).

Conclusion

Objections must be preserved or they are waived. While exceptions have grown up over the years to give some leniency to this requirement, the far safer practice is to follow these guidelines and make sure your objections are preserved. You will sleep better.

Paralegal Certificate Training

Rewarding. Affordable. Fast!

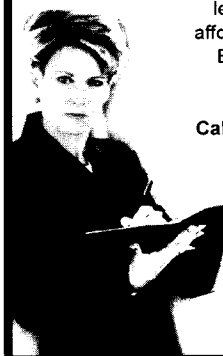
Earn a Paralegal Certificate from the Professional Development Institute of the University of North Texas.

Designed to boost a firm's earning potential by providing important proof of education to legal services staff, the PDI program has been the program of choice for more than 2,300 people over the past 14 years. Our convenient Live and Online programs fit busy lifestyles with weekend-only or distance-learning options.

Live Program – Classes available in Dallas, Fort Worth, Houston and Austin. Earn a Certificate in just 8 weekends!

Online Program – Our new Online program makes distance learning convenient, affordable and flexible. Earn a Certificate in just 8 weeks!

Call 800.433.5676 for a free information packet or visit us online at: www.PDI.org



pdi Professional Development Institute
University of North Texas

TRADEMARK & COPYRIGHT SEARCHES

TRADEMARK - Supply word and/or design plus goods or services.

SEARCH FEES:

COMBINED SEARCH - \$315
(U.S., State, Expanded Common Law and Internet)
TRADEMARK OFFICE - \$135
STATE TRADEMARK - \$140
EXPANDED COMMON LAW - \$165
DESIGNS - \$210 per International class
COPYRIGHT - \$180
PATENT SEARCH - \$450 (minimum)

INTERNATIONAL SEARCHING

DOCUMENT PREPARATION

(for attorneys only - applications, Section 8 & 15, Assignments, renewals.)

RESEARCH-(SEC - 10K's, ICC, FCC, COURT RECORDS, CONGRESS.)

APPROVED - Our services meet standards set for us by a D.C. Court of Appeals Committee.

Over 100 years total staff experience—not connected with the Federal Government.

GOVERNMENT LIAISON SERVICES, INC.

200 North Glebe Rd., Suite 321

Arlington, VA 22203

Phone: (703) 524-8200

FAX: (703) 525-8451

Major credit cards accepted.

TOLL FREE: 1-800-642-6564

WWW.TRADEMARKINFO.COM

Since 1957

Notes

1. Ironically, the article initially stated, "not a single lawyer has preserved the objection." During the drafting stage of this article, however, one lawyer finally did it right.
2. 689 S.W.2d 888 (Tex. 1985).
3. 159 S.W.3d 87 (Tex. 2005).
4. *Id.* at 90-91.
5. *Escamilla v. State*, 143 S.W.3d 814, 821 (Tex.Crim.App. 2004).
6. *McMillin v. State Farm Lloyds*, 180 S.W.3d 183 (Tex. App. — Austin 2005, no pet. h.).
7. 159 S.W.3d at 91; see also *Silbsbee Hosp. v. George*, 163 S.W.3d 284, 294 (Tex. App. — Beaumont, 2005, pet. denied) ("there is no requirement that a party identify the reasons the remaining venire members that it would have stricken were objectionable").
8. *Id.*
9. *Id.*; see also *Escamilla*, 143 S.W.3d at 821.
10. TEX. R. CIV. P. 166a(f).
11. *Id.*; see also *El Paso Assoc., Ltd. v. J.R. Thurman & Co.*, 786 S.W.2d 17, 19 (Tex. App. — El Paso 1990, no writ).
12. *Womco, Inc. v. Navistar Intern. Corp.*, 84 S.W.3d 272, 281 n.6 (Tex. App. — Tyler 2002, no pet.). "A specific objection is one that enables the trial court to understand the precise grounds so as to make an informed ruling and affords the offering party an opportunity to remedy the defect, if possible." *Id.*
13. Tex. R. App. P. 33.1(a). See *McConnell v. Southside School Dist.*, 858 S.W.2d 337, 343 n.7 (Tex. 1993) ("finally, a party asserting exceptions must obtain a ruling at or prior to the hearing of the motion for summary judgment"); *Lecton v. Dyll*, 65 S.W.3d 696, 703 (Tex. App. — Dallas 2001, pet. denied) (although appellant "filed objections with the trial court, he did not obtain a ruling from the trial court and, thus, he waived the objections").
14. *Eads v. American Bank, N.A.*, 843 S.W.2d 208, 211 (Tex. App. — Waco 1992).
15. *Manoogian v. Lake Forest Corp.*, 652 S.W.2d 816, 819 (Tex. App. — Austin 1983, writ ref'd n.r.e.).
16. *Scripps Texas Newspapers v. Balalcazar*, 99 S.W.3d 829, 834 (Tex. App. — Corpus Christi 2003, pet. denied).
17. *Einhorn v. LaChance*, 823 S.W.2d 405, 410 (Tex. App. — Houston [1st Dist.] 1992, pet. dis'd w.o.j.).
18. *Youngstown Sheet & Tube Co. v. Penn.*, 363 S.W.2d 230, 234 (Tex. 1962); *Atchley v. NCNB Tex. Nat'l Bank*, 795 S.W.2d 336, 337 (Tex. App. — Beaumont 1990, writ denied).
19. *Denison v. Haerber Roofing Co.*, 767 S.W.2d 862, 865 (Tex. App. — Corpus Christi 1989, no writ); *Ellen v. Brazos County Bail Bd.*, 127 S.W.3d 42, 46 (Tex. App. — Houston [14th Dist.] 2003, no pet. h.).
20. *Neeley v. Turner*, 873 S.W.2d 113, 114 (Tex. App. — Tyler 1994, no writ).
21. *Cluett v. Medical Protective Co.*, 829 S.W.2d 822, 825 (Tex. App. — Dallas 1992, writ denied).
22. *Bauer v. Jasso*, 946 S.W.2d 552, 557 (Tex. App.—Corpus Christi 1997, no writ); *Rizkallah v. Conner*, 952 S.W.2d 580, 585 (Tex. App. — Houston [1st Dist.] 1997, no writ). In *Dailey v. Albertson's, Inc.*, 83 S.W.3d 222, 226 (Tex. App. — El Paso 2002, no pet.), the court observed that the Supreme Court has issued conflicting opinions on the question of whether an objection of lack of personal knowledge is form or substance.
23. *Hall v. Rutherford*, 911 S.W.2d 422, 425 (Tex. App.—San Antonio 1995, writ denied); *Tucker*

SECURE
CONNECT
COLLABORATE
MARKET
COMMUNICATE



Corner

OFFICE

cbeyond.net/legal | 1.866.424.5439

Putting in 80 hours on a case is easier when you can work away from the office. That's why legal executives are choosing Cbeyond and enjoying full T-1 Internet access speeds, plus valuable phone features like a toll-free number and voicemail, all from home. It's called BeyondOffice. And it's just one of many tools we offer to keep you connected. Big business has enjoyed the benefits of this kind of service for years. Thanks to Cbeyond, now it's your turn.

CBYOND®
The last communications company your law firm will ever need.™

VOICE • BROADBAND T-1 • MOBILE • AND MORE

Delivering all of your small business communications needs through one provider and one bill.

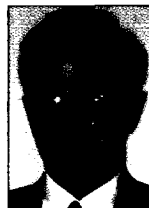
© 2006 Cbeyond Communications. Services may not work on all equipment. Standard size limitations on the services offered apply. Service availability, price and offer subject to change without notice. Taxes, surcharges and governmental fees are additional. Cancellation of additional services requires notice to Cbeyond Customer Care. Other conditions apply. View conditions and complete contract at <http://www.cbeyond.net/constants/legal.htm>. All rights reserved.

- v. Atlantic Richfield Co.*, 787 S.W.2d 555, 557 (Tex. App. — Corpus Christi 1990, writ denied); *Trimble v. Gulf Paint & Battery, Inc.*, 728 S.W.2d 887, 889 (Tex. App. — Houston [1st Dist.] 1987, no writ).
24. *De Los Santos v. Southwest Tex. Methodist Hosp.*, 802 S.W.2d 749, 755 (Tex. App. — San Antonio 1990, no writ).
25. *Branton v. Wood*, 100 S.W.3d 645, 648 (Tex. App. — Corpus Christi 2003, no pet.); *Dailey v. Albertson's, Inc.*, 83 S.W.3d 222, 225 (Tex. App. — El Paso 2002, no pet.).
26. *Feldman v. Manufacturers Hanover Mortgage Corp.*, 704 S.W.2d 422, 425 (Tex. App. — Houston [14th Dist.] 1986, writ ref'd n.r.e.).
27. *In re Estate of Schiuetz*, 102 S.W.3d 355, 360-61 (Tex. App. — Corpus Christi 2003, pet. denied).
28. Tex. R. App. P. 33.1(a)(2)(A).
29. *Well Solutions, Inc. v. Stafford*, 32 S.W.3d 313, 316 (Tex. App. — San Antonio 2000, no pet.).
30. *See Blum v. Julian*, 977 S.W.2d 819, 823-24 (Tex. App. — Ft. Worth 1998, no pet.); *Columbia Rio Grande Regional Hosp. v. Sover*, 17 S.W.3d 387, 395-96 (Tex. App. — Corpus Christi 2000, no pet.).
31. *Dolcefino v. Randolph*, 19 S.W.3d 906, 926 (Tex. App. — Houston [14th Dist.] 2000, no pet. h.); *Well Solutions, Inc. v. Stafford*, 32 S.W.3d 313 (Tex. App. — San Antonio 2000, no pet.); *Watson v. Dallas Ind. School Dist.*, 135 S.W.3d 208, 229 (Tex. App. — Waco 2004, no pet. h.); *In re Estate of Loveless*, 64 S.W.3d 564, 573 (Tex. App. — Texarkana 2000, no pet. h.); *Nelson v. Dykeman*, 2002 WL 538811 (Tex. App. — Beaumont 2002).
32. *Richards v. Commission for Lawyer Discipline*, 35 S.W.3d 243, 252 (Tex. App. — Houston [14th Dist.] 2000); *Estate of Veale v. Teledyne Indus.*, 899 S.W.2d 239 (Tex. App. — Houston [1st Dist.] 1995).
33. Tex. R. Evid. 103(a)(2).
34. *Continental Coffee Prod. Co. v. Cazarez*, 903 S.W.2d 70, 80 (Tex. App. — Houston [14th Dist.] 1995), *rev'd in part on other grounds*, 937 S.W.2d 444 (Tex. 1996); *Vandever v. Goettee*, 678 S.W.2d 630, 635 (Tex. App. — Houston [14th Dist.] 1984, writ ref'd n.r.e.).
35. *In re C.Q.T.M.*, 25 S.W.3d 730, 738 (Tex. App. — Waco 2000, pet. denied); *Holland v. Hayden*, 901 S.W.2d 763, 765 (Tex. App. — Houston [14th Dist.] 1995, writ denied); *Schwartz v. Forest Pharmaceuticals, Inc.*, 127 S.W.3d 118, 125 (Tex. App. — Houston [1st Dist.] 2003, pet. denied).
36. *Bohatch v. Butler & Binion*, 905 S.W.2d 597, 607 (Tex. App. — Houston [14th Dist.] 1995), *aff'd* 977 S.W.2d 543 (Tex. 1998).
37. *In re Canales*, 113 S.W.3d 56, 68 (Tex. Rev. Trib. 1994, no appeal); *see also* Goode, Wellborn & Sharlot, Guide to the Texas Rules of Evidence, §103.3 at 21 (2d ed. 1993).

38. *Id.*
39. *Ludlow v. DeBerry*, 959 S.W.2d 265, 270 (Tex. App. — Houston [14th Dist.] 1997, no writ).
40. *Sims v. Brackett*, 885 S.W.2d 450, 453 (Tex. App. — Corpus Christi 1994, writ denied).
41. *Coleman v. Coleman*, 170 S.W.3d 231, 239 (Tex. App. — Dallas 2005, no pet. h.).
42. *Southwest Country Ent. V. Lucky Lady Oil*, 991 S.W.2d 490, 493 (Tex. App. — Ft. Worth 1999, pet. denied).
43. *Waldon v. City of Longview*, 855 S.W.2d 875, 880 (Tex. App. — Tyler 1993, no writ).
44. *Southwest County*, 991 S.W.2d at 493.
45. *Id.*; *see also Johnson v. Garza*, 884 S.W.2d 831, 834 (Tex. App. — Austin 1994, writ denied).
46. *Richardson v. Green*, 677 S.W.2d 497, 501 (Tex. 1984); *Schwartz v. Forest Pharmaceuticals*, 127 S.W.3d at 124; *Henry v. Low*, 132 S.W.3d 180, 196 (Tex. App. — Corpus Christi 2004); *Atkinson Gas Co. v. Albrecht*, 878 S.W.2d 236, 242-43 (Tex. App. — Corpus Christi 1994, writ denied).
47. *Rawlings v. State*, 874 S.W.2d 740, 742 (Tex. App. — Ft. Worth 1994, no writ).
48. Tex. R. Evid. 103(a)(1).
49. *Leaird's, Inc. v. Wrangler, Inc.* 31 S.W.3d 688,

- 690-91 (Tex. App. — Waco 2000, pet. denied); *Commerce, Crowds & Canton, Ltd. v. DKS Constr., Inc.*, 776 S.W.2d 615, 620 (Tex. App. — Dallas 1989, no writ); *City of Fort Worth v. Holland*, 748 S.W.2d 112, 113 (Tex. App. — Ft. Worth 1988, writ denied).
50. *Leaird's Inc. v. Wrangler, Inc.*, 31 S.W.3d at 691; *Atkinson Gas Co. v. Albrecht*, 878 S.W.2d at 243.
51. *Davis v. Fisk Elec. Co.*, 2006 WL 54423 (Tex. App. — Houston [14th Dist.] 2006).
52. *Volkswagen of America v. Ramirez*, 159 S.W.3d 897, 907 (Tex. 2004).
53. *Atkinson Gas Co. v. Albrecht*, 878 S.W.2d at 243; *see also Saucedo v. Kerlin*, 164 S.W.3d 892, 920 (Tex. App. — Corpus Christi 2005, no pet. h.); *Henry v. Low*, 132 S.W.3d at 196.

RANDY WILSON



was appointed judge of the 157th District Court in Harris County in April 2003. After graduating first in his class from the University of Houston in 1977, Wilson was a partner in Susman Godfrey, L.L.P. from 1980 to 2003. He is currently the statewide MDL judge for Texas Vioxx cases.



One Test One Course One World

Qualify as an English Solicitor

How?

- Take an 8-hour open book exam – the Qualified Lawyers Transfer Test (QLTT)*
- Offered exclusively by QLTT International on US soil
- Now available in Chicago, New York, and Los Angeles; and in Houston, Miami, and Washington D.C. (pending approval)

Why?

- End dependence on outsourcing
- Increase your billing rates
- Attract new clients with cross-border work
- Open the doors to practice in 48 countries including: Bermuda, Singapore, Hong Kong, Barbados, Jamaica and the Cayman Islands.

Option to earn MCLE credits
For registration and course inquiries, call 800-430-3588
Montgomery GI Bill reimbursement



www.QLTT.com




* Official qualifying transfer exam of the Law Society of England & Wales