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Rules Reconsidered as iPads, Hyperlinks Aid Fifth Circuit Judges

By JOHN COUNCIL
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iPads are becoming a regular part of the life of a judge on the U.S. Court of Appeals for the Fifth Circuit—a fact that Fifth Circuit Clerk Lyle Cayce discussed during a seminar earlier this month sponsored by the Bar Association of the Fifth Federal Circuit. They use them on the

bench, in chambers and even in foreign countries, he says. The court has proposed a rule change that will affect how the judges read lawyers' briefs. Texas Lawyer senior reporter John Council sent Cayce a list of questions about the rule change and what it means for appellate lawyers

Texas Lawyer: The Fifth Circuit is currently considering a rule change as it relates to case

citations in the briefs it considers. It seems innocuous enough, but what is the court seeking to accomplish with this proposed Rule 28.2.2?

Lyle Cayce: We proposed the amendment to provide judges better and quicker access to the



Lyle Cayce

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Show Me the Money

Clients Enlist New Counsel In Pursuit of Allegedly Missing Funds

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Jacob Marshall has sent a demand letter, made phone calls and even filed a lawsuit on behalf of two clients, all in hopes of recovering nearly a half-million dollars in settlement money that his clients believe was deposited in their former attorney's Interest On Lawyer Trust Account (IOLTA account). But, Marshall says, so far it's all to no avail.

Now, he says, it appears that Armando Gonzalez and Guillermo Castaneda Sr.'s best hope of seeing any of that money is the State Bar of Texas' Client Security Fund.

The bar established the fund in 1975 to provide relief to clients whose lawyers allegedly have misappropriated money from them. It's a fund that's also seen a record amount of claims recently. [See "Worst Case" of Lawyer Misconduct Could Drain Client Security Fund," this page.]

"I think, for my clients, it is probably the most solid avenue for recouping some of the money that was taken from them," alleges Marshall.

His clients have filed a lawsuit bringing

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Jacob Marshall represents two clients who are suing their former lawyer.

"Worst Case" of Lawyer Misconduct Wallops Client Security Fund

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During his closing arguments in the sentencing hearing for disbarred Dallas plaintiffs lawyer Thomas Corea, Dallas County Assistant District Attorney Jacob Harris argued that Corea has earned a unique place in Texas legal history.

"We are of the opinion that the case of Thomas Corea—it's the worst case of lawyer misconduct in Texas and possibly in the history of Texas," says Harris about his final argument to Dallas County Criminal District Court No. 7 Judge Michael Snipes.

Corea pleaded guilty to three counts of misapplication of fiduciary property, says Harris, and went before Snipes for a determination of punishment. On Oct. 23 the judge sent Corea to prison for 25 years.

During the punishment hearing, Harris and another prosecutor alleged that Corea misappropriated \$3.8 million



Thomas Corea

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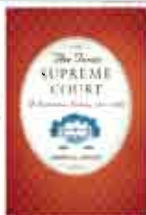


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Clients Enlist New Counsel in Pursuit of Allegedly Missing Funds

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breach of fiduciary duty claims, among other allegations, against Ricardo Antonio Baca and his law firm, the RAB Law Firm.

"At the same time, we are going to pursue Mr. Baca diligently to recover anything and everything that we can."

Baca did not return a call seeking comment. George Farah of Houston's Guerra & Farah, who represents Baca and RAB Law Firm, says his clients have not done anything wrong.

Farah says Baca has recently gone through a divorce and is experiencing "personal issues."

"As far as the personal issues, I don't have much information," Farah says.

The background to the dispute, according to the original petition in *Armando Gonzalez and Guillermo Castaneda v. RAB Law Firm* is as follows.

Gonzalez and Castaneda both hired Baca and the RAB Law Firm to represent them in a business shareholder dispute over a small Dallas chicken restaurant chain called Pollo Fiesta Inc.

Gonzalez and Castaneda eventually settled that case, and Baca and the RAB Law Firm "admit" they deposited a total of \$469,436.50 related to the settlement in the firm's Chase Bank IOLTA account in June 2012, the petition alleges.

Since that time, Gonzalez and Castaneda have "repeatedly" requested that Baca and RAB Law Firm pay them the settlement money and have been told "one unsatisfactory excuse after another" that they would be paid the money shortly "after some ill-defined issue had been resolved." By June of this year, they sent a demand letter to Baca and his firm to release the settlement money, but Baca and the firm failed to respond, according to the petition.

On Sept. 9, the clients' current attorney spoke with Baca on the telephone, and Baca said the money was in the firm's IOLTA account but was allegedly frozen, and Baca would not disclose any further details. Baca also admitted he

had "no documentation of any kind" supporting that statement, according to the petition.

On Sept. 20, Gonzalez and Castaneda filed the lawsuit in Dallas County's 68th District Court, alleging breach of contract and breach of fiduciary duty against Baca and his firm. The suit also applied for a writ of garnishment directed to Chase Bank for the RAB Law Firm's IOLTA account.

George Farah of Houston's Guerra & Farah, who represents Ricardo Antonio Baca and RAB Law Firm, says his clients have not done anything wrong.

On Oct. 8, Marshall sent a letter to the State Bar's chief disciplinary counsel, reporting a formal grievance against Baca, alleging Baca claimed to have deposited the disputed settlement money in his firm's IOLTA account but that Chase Bank's lawyer had told Marshall that the "IOLTA account balance was zero," according to the letter, which Marshall provided.

Claire Mock, public affairs administrator for the Bar's chief disciplinary counsel, cannot confirm or deny that a grievance had been filed against Baca but notes that he has no previous disciplinary history with the Texas Bar.

On Oct. 18, Chase Bank filed an answer to the writ of garnishment stat-

ing. "[A]t the time the Writ was served on it, Garnishee was not in possession of any other effects belonging to RAB or Baca," and "Garnishee does not have any knowledge of any other person who is indebted to or has possession of any other effects belonging to RAB or Baca."

Safety Net

Marshall says, when he spoke with the chief disciplinary counsel's office to report the grievance against Baca, he first learned the details of how the Client Security Fund works.

"And what they told me was that, in order to be able to access or make an application to the client security fund, the clients needed to file grievances," notes Marshall, which he says his clients are in the process of doing.

If the grievance results in disciplinary action against the attorney and all appeals are exhausted, the Client Security Fund Committee then considers the client's application to the fund, according to information on the bar's website.

As of April, the committee will reimburse up to \$40,000 to a claimant who can prove he suffered a loss stemming from theft or an unearned or unrefunded fee by his lawyer, according to the website.

The fund is being inundated with claims filed by the former clients of disbarred Dallas plaintiff attorney Thomas Corea, says Maureen Ray, special administrative counsel for the State Bar of Texas' Office of Chief Disciplinary Counsel. But the fund's solvency is not in question, notes John Sirman, legal counsel for the bar.

"In order to pay annual claims, each year a transfer is made to the Client Security Fund from the General Fund of the Bar. The current Bar year's transfer is \$800,000. The paid or earmarked Corea-related applications account for \$283,775 of this. Thirty-one additional Corea-related claims remain, having a potential payout value of more than \$503,000," Sirman writes in e-mail.

"The State Bar Board's Client Security Fund Committee and the Fund's administrator, Maureen Ray, closely monitor the exposure to the Fund to identify potential areas of risk. The fund has a corpus which has been developed over many years to ensure the financial health of the fund. As of September 30, 2013, the corpus had \$3,417,000," Sirman writes. Its "solvency is not in question. The Client Security Fund Committee is currently considering how to administer the current year's allocation, the corpus, and its budget request for next year in light of the Corea-related claims."

Marshall alleges that, during discovery, he learned that Baca does not carry legal malpractice insurance, which makes the chances of recovery for his clients slim — with the possible exception of recovery from the Client Security Fund. His clients are at or near retirement age, and they hoped the settlement money would ease their retirement plans, Marshall says.

"These are hard-working people, and they put their trust in a lawyer. And they don't understand how this could happen, because they didn't do anything wrong," says Marshall, a partner in Dallas' Marshall & Kellow. "They trusted Mr. Baca because he was a lawyer."

Farah says of his client, "In his defense he's made efforts to hire counsel to answer all of the allegations that were brought against him. The legal system is a good system, and it will work itself out. If he's in the wrong, it will work itself out. And if he's right, it will work itself out."

"I do disagree with the tactics the attorney in Dallas is using—calling his cell phone and calling his staff. And I don't agree with those tactics," Farah says.

When asked if there was any money in the RAB Law Firm's IOLTA account, Farah responded: "That's up to a jury and a judge. At this point, it's my client's position that . . . he hasn't done anything wrong, and it doesn't warrant this lawsuit against him." ■

"Worst Case" of Lawyer Misconduct Wallops Client Security Fund

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from his clients, and prosecutors put on 27 witnesses to describe the damage he had done, Harris says.

But John Helms, an attorney with Dallas' Fitzpatrick Hagood Smith & Uhl who defended Corea, says he disagrees with the amount of money lost by Corea's former clients.

"The state's calculation of the loss amount was roughly \$3.8 million dollars. Our calculation of the loss was between \$1.1 and \$1.3 million," Helms says, noting that prosecutors agreed to drop pending and future indictments resulting from Corea's law practice in exchange for Corea's guilty plea.

One of the state's best witnesses was Maureen Ray, special administrative counsel for the State Bar of Texas'

Office of Chief Disciplinary Counsel, Harris says. She testified during the hearing "that she had never seen a lawyer misconduct [this bad] in the state of Texas," Harris says.

A call seeking comment from Ray resulted in an email from Claire Mock, public affairs administrator for the chief disciplinary counsel, which reads, "Maureen has been counsel for the Client Security Fund for about 10 years. In handling Mr. Corea's applicants, she reviewed her past files and determined that Mr. Corea had not only the highest number of applicants, but also the highest dollar figure by far."

Ray also testified that Texas Client Security Fund—money that the Bar reserves for clients cheated by their attorneys—had never received so many claims and so many complaints about an

individual lawyer, Harris says.

"They had 43 claims by the time of trial," he notes.

If they paid out all of the claims made against Corea, not only would the fund be depleted, but the State Bar of Texas' operating fund also would be depleted, Ray told the court, Harris recounts.

Discussing the defense's strategy, Helms says, "The other thing we tried to do is put into perspective what happened with Mr. Corea's law practice. He had had a very successful law practice for a number of years that was based on flat-fee practices. Those types of practice went away, and he was relying on personal injury cases with contingent fees," Helms says of his argument before the trial judge. "As a result in the changes of the practices of his firm and the result of his poor management of

the firm, the firm began to deteriorate."

"And Mr. Corea was aware, I believe, that at least some of the client funds were being used to run his practice improperly. I don't believe he was aware of the entire magnitude of that until it was brought to his attention in [late] 2011," says Helms who noted that Corea's "prescription drug and personal problems" added to his firm's deterioration.

"At that point the firm began to try to pay clients they owed money. Mr. Corea began selling some of his own property to try to make the clients whole. They were able to do that for some clients and there is no doubt that many of the clients weren't paid what they were owed."

Janie Martin, who also defended Corea at trial, did not return a call seeking comment. ■