Advocacy.

As advocates, are we as good as we think we are?

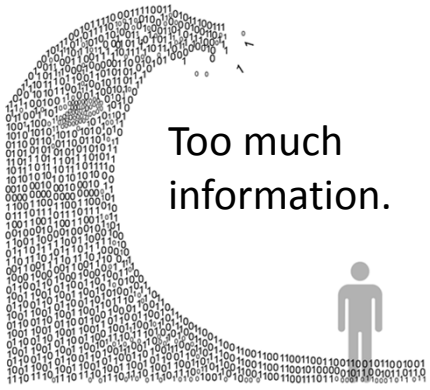
Do the math:

93% of Americans believe themselves to be in the top 50% of safe drivers.

Are you in the top 50% of advocates?

New litigation culture means less on-the-job training.

Mature lawyers need to develop skills with the technology that is now common-place.



Personal narrative is not a substitute for advocacy.

What is advocacy anyway?

Persuasion:

To move by argument to a belief, position, or course of action.

Persuasive Advocates:

1. Target the audience.
2. Develop a cogent message that engages the audience.
3. Prepare impactful visuals to enhance their message.

Audience

Message

Speaker

Which one is most important?

Audience.

It's all about them,
Not you.

Audience.

Judge

Client

Jury

Opposing Counsel

Mediator

Your task:

What does the listener

- NEED to hear,
- WANT to hear, and
- NOT WANT to hear?

Message.

Develop a cogent message that engages the audience.

Tell me what's important.

Tell me what you want me to do.

Tell me why.

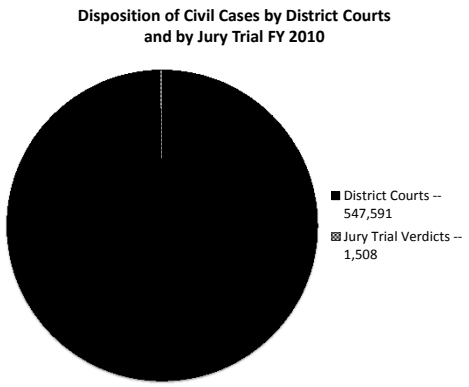
Take the expressway.

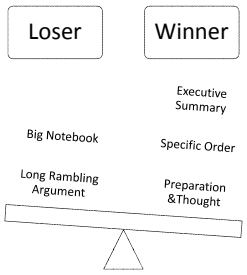
Not the winding road.

Practice.

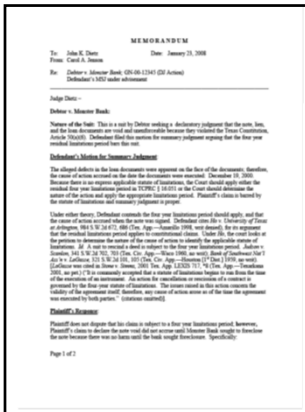
Best predictor of the quality of surgeon is not reputation, education or intelligence – it's how many times she's done the surgery.

I never met a lawyer who said they were over-prepared.





Tools to Clarify and Strengthen Your Message.



MEMORANDUM

To: John K. Doty Date: January 23, 2008
From: Carol A. Jensen

Re: *Debtor v. Monster Bank*; GN-08-12345 (DJ Action)
Defendant's MSJ under advisement

Judge Doty: –

Debtor v. Monster Bank:

Nature of the Suit: This is a suit by Debtor seeking a declaratory judgment that the note, lien, and the loan documents are void and unenforceable because they violated the Texas Constitution, Article 50(a)(6). Defendant filed this motion for summary judgment urging that the four year residual limitations period bars this suit.

Defendant's Motion for Summary Judgment

The alleged defects in the loan documents were apparent on the face of the documents; therefore, the cause of action accrued on the date the documents were executed: December 18, 2000. Because there is no express applicable statute of limitations, the Court should apply either the two year or four year limitations period in TCPRC § 16.051 or the Court should determine the nature of the claim to apply the appropriate limitations period. Plaintiff's claim is barred by the statute of limitations and summary judgment is proper.

Under either theory, Defendant contends the four year limitations period should apply, and that the cause of action accrued when the note was signed. Defendant cites *Hi v. University of Texas at Arlington*, 984 S.W.2d 672, 680 (Tex. App.—Amarillo 1998, not denied), for its argument that the residual limitations period applies to constitutional claims. Under *Hi*, the court looks at the petition to determine the nature of the cause of action to identify the applicable statute of limitations. *Id.* A suit to rescind a deed is subject to the four year limitations period. *Judson v. Scandia*, 341 S.W.2d 703, 705 (Tex. Civ. App.—Waco 1960, no writ); *Bank of Southwest Nat'l Ass'n v. LeGrand*, 535 S.W.2d 101, 105 (Tex. Civ. App.—Houston [1st Dist.] 1976, no writ). Different were held in *Stone v. Stone*, 2001 Tex. App. LEXIS 717, *9 (Tex. App.—Corsicana 2001, no pet.) ("It is well settled that a cause of action for cancellation or rescission of a contract is governed by the four year statute of limitations. The issues raised in this action concern the validity of the agreement itself; therefore, any cause of action arose as of the time the agreement was executed by both parties." (citations omitted)).

Plaintiff's Response

Plaintiff does not dispute that his claim is subject to a four year limitations period; however, Plaintiff's claim to declare the note void did not accrue until Monster Bank sought to foreclose the note because there was no harm until the bank sought foreclosure. Specifically:

Page 1 of 2

Executive summaries get to the point.

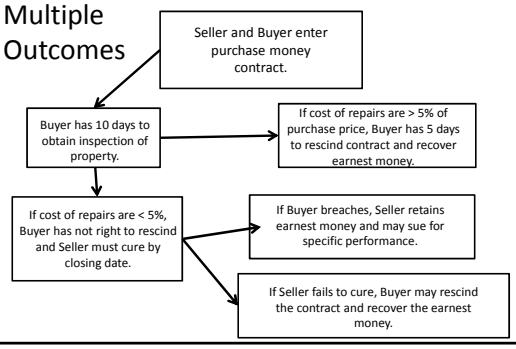
1. The cause of action did not accrue until defendant sought to foreclose the lien, so the suit was timely filed;
2. The constitutional violation is a continuing tort, and the cause of action does not accrue until the lien is rescinded or declared unenforceable; and
3. Because Plaintiff could have asserted the lien was void in a counterclaim to a foreclosure suit, the law is set up so that the statute of limitations would never bar plaintiff's ability to defeat a foreclosure action where the original agreement is void because of constitutional violations.

Recommendation:

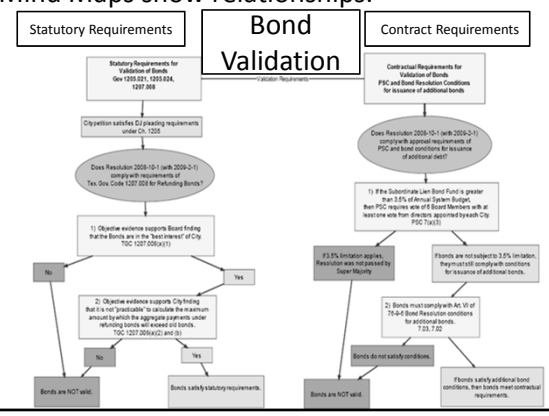
Plaintiff did not cite any case law to support his arguments, nor did I find any. The nature of Plaintiff's suit is an action for cancellation or rescission. I agree with Defendant that the alleged constitutional violations, if any, would be apparent from the face of the documents. The cause of action accrued when the documents were executed, and summary judgment

Flowcharts Show Multiple Outcomes

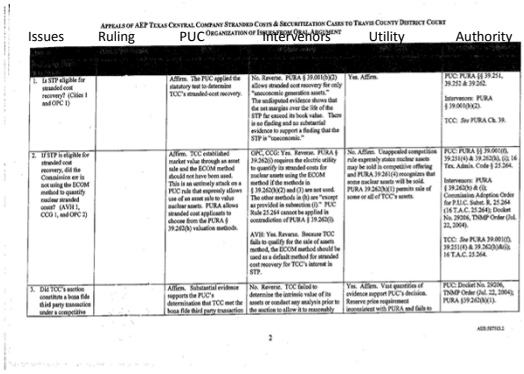
Parties' duties and remedies under the sales contract.



Mind Maps show relationships.



Spreadsheets for numerous issues.



APPEALS OF AEP TEXAS CENTRAL COMPANY STRANDED COSTS & SECURITIZATION CASES TO TRAVIS COUNTY DISTRICT COURT
ORGANIZATION OF INTERVENORS' ARGUMENT

Issues	Ruling	PUC	Intervenors	Utility	Authority
1. Is STP eligible for stranded cost recovery? (Cities 1 and OPC 1)		Affirm. The PUC applied the statutory test to determine TCC's stranded cost recovery.	No. Reverse. PURA § 39.001(b)(2) allows stranded cost recovery for only "uneconomic generation assets." The undisputed evidence shows that the net margins over the life of the STP far exceed its book value. There is no finding and no substantial evidence to support a finding that the STP is "uneconomic."	Yes. Affirm.	PUC: PURA §§ 39.251, 39.252 & 39.262. Intervenors: PURA § 39.001(b)(2). TCC: *See* PURA Ch. 39.
2. If STP is eligible for stranded cost recovery, did the Commission err in not using the ECOM method to quantify nuclear stranded costs? (AVH 1, CCG 1, and OPC 2)		Affirm. TCC established market value through an asset sale and the ECOM method should not have been used. This is an untimely attack on a PUC rule that expressly allows use of an asset sale to value nuclear assets. PURA allows stranded cost applicants to choose from the PURA § 39.262(h) valuation methods.	OPC, CCG: Yes. Reverse. PURA § 39.262(i) requires the electric utility to quantify its stranded costs for nuclear assets using the ECOM method if the methods in § 39.262(h)(2) and (3) are not used. The other methods in (h) are "except as provided in subsection (i)." PUC Rule 25.264 cannot be applied in contradiction of PURA § 39.262(i). AVH: Yes. Reverse. Because TCC fails to qualify for the sale of assets method, the ECOM method should be used as a default method for stranded cost recovery for TCC's interest in STP.	No. Affirm. Unopposed competition rule expressly states nuclear assets may be sold in competitive offering and PURA 39.261(4) recognizes that some nuclear assets will be sold. PURA 39.262(h)(1) permits sale of some or all of TCC's assets.	PUC: PURA §§ 39.001(f), 39.251(4) & 39.262(h), (i); 16 Tex. Admin. Code § 25.264. Intervenors: PURA § 39.262(h) & (i); Commission Adoption Order for P.U.C. Subst. R. 25.264 (16 T.A.C. 25.264); Docket No. 29206, TNMP Order (Jul. 22, 2004). TCC: *See* PURA 39.001(f), 39.251(4) & 39.262(h)(6); 16 T.A.C. 25.264.
3. Did TCC's auction constitute a bona fide third party transaction under a competitive		Affirm. Substantial evidence supports the PUC's determination that TCC met the bona fide third party transaction	No. Reverse. TCC failed to determine the intrinsic value of its assets or conduct any analysis prior to the motion to allow it to reasonably	Yes. Affirm. Vast quantities of evidence support PUC's decision. Reserve price requirement inconsistent with PURA and fails to	PUC: Docket No. 29206, TNMP Order (Jul. 22, 2004); PURA §39.262(h)(1).

AEB.0070102

2

CAUSE NO. D-1-GN-12-003456

ABC REALTY, Plaintiff
v.
XYZ DEVELOPER and JANE DOE, Defendants

§ IN THE DISTRICT COURT OF
§ TRAVIS COUNTY, TEXAS
§ 250th JUDICIAL DISTRICT

ORDER ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT XYZ DEVELOPER

On January 1, 2009, the Court heard Plaintiff's Motion for Summary Judgment Against Defendant XYZ Developer. The Court has considered the pleadings, the motion, the response and the summary judgment evidence. The Court finds the motion is well-taken and, accordingly, GRANTS Plaintiff's motion for summary judgment on the following grounds:

1) Defendant's Counterclaims for fraud and DTPA violations fail because there is no evidence that XYZ Developer suffered any damages that do not arise from the

Bring an Order.

Prepare from the end. . . Not at the end.

Wrap it up.