

Administrative Case Law Update

Presented by:

Texas Tech Administrative Law Journal

Texas Tech University School of Law

1802 Hartford Avenue

Lubbock, Texas 79410

alj.law@ttu.edu

SPEAKER

Laurie Ratliff

CONTRIBUTING AUTHORS

(Texas Tech Administrative Law Journal Editors, Vol. 20)

Kiley Aycock
Editor in Chief

Holton Westbrook
Executive Managing Editor

Mason Leal
Executive Business Manager

Elliott O'Day
Executive Articles Editor

Taylor Nichols
Comment Editor

Miguel Hernandez
Comment Editor

Weston Mumme
Article Editor

Andrew Smith
Article Editor

Kasey Chester
Article Editor

Matthew Frost
Article Editor

David Hutchens
Article Editor

Maria Oviedo
Article Editor

Speaker Biographies

Laurie Ratliff

Owner, Laurie Ratliff LLC
Post Office Box 5010, Austin, Texas 78763
laurie@laurieratliffllaw.com | 512 422 3946

Laurie Ratliff received her J.D. from the Texas Tech University School of Law in 1992, where she served as Research Editor on the *Texas Tech Law Review*. She received her B.B.A. from the University of Texas at Austin in 1989.

After law school, she served as a briefing attorney for Justice John T. Boyd in the Seventh Court of Appeals in Amarillo. Later, she was a staff attorney for the Third Court of Appeals in Austin.

Laurie is board certified in civil appellate law by the Texas Board of Legal Specialization and has been selected as a “Super Lawyer” by Thompson Reuters every year since 2005. A frequent speaker on court of appeals practice and trial procedure, Laurie has written a monthly column commenting on recent Third Court of Appeals’ opinions for the *Austin Lawyer* magazine since 2001.

In addition to her legal work, Laurie serves on the St. Andrew’s Episcopal School Board of Trustees and is an active volunteer at the school.

Student Author Biographies

¥ **Kiley Aycock**, J.D. Candidate 2019, is the Editor-in-Chief for Volume 20 of the Texas Tech Administrative Law Journal. She grew up in Lubbock, Texas and graduated from the University of Texas at Austin where she majored in International Relations and Global Studies. She is primarily interested in civil litigation.

θ **Kasey Chester**, J.D. Candidate 2019, is an Article Editor for Volume 20 of the Texas Tech Administrative Law Journal. She grew up in Midland, Texas, and attended Texas Christian University where she received a Bachelor of Science in Political Science in 2016. Kasey currently serves as the Fundraising Chair for the Criminal Law Association, is a member of the National Mock Trial Team, and is involved in many other organizations on campus. She has a strong interest in civil litigation, international law, as well as business and commercial law.

v **Matthew Frost**, J.D. Candidate 2019, is an Articles Editor for Volume 20 of the Texas Tech Administrative Law Journal. He grew up in

Boerne, Texas and received his Bachelor of Arts in English with a concentration in Professional Writing from the University of Texas-San Antonio in 2015. He is a dual degree student in the Juris Doctor/ Master of Science in Personal Financial Planning program. His legal interests include estate planning, retirement law, and civil litigation. He hopes to practice in one of these areas, hopefully combining his legal interests with his interest in personal financial planning.

ς **Miguel Hernandez**, J.D. Candidate 2019, is a Comment Editor for Volume 20 of the Texas Tech Administrative Law Journal. He is a native of Lubbock, Texas, and received his Bachelor of Science degree in Chemical Engineering from Texas Tech University. He is currently employed at the Office of Research Commercialization at Texas Tech University as an Intellectual Property Analyst, where he completes patentability assessments of research done at the university. He is interested in intellectual property law, energy law, and products liability.

μ **David M. Hutchens**, J.D. Candidate for 2019, is an Articles Editor for Volume 20 of the Texas Tech Administrative Law Journal. He was born in Plano and raised in Lubbock, Texas. David received his Bachelors of Arts from Texas Tech University (2011). His primary legal interests include water, oil & gas, and civil litigation.

Χ **Mason Leal**, J.D. Candidate 2019, is the Business Manager for Volume 20 of the Texas Tech Administrative Law Journal. He is from Austin, Texas, but traveled to Dallas for college. In December 2014, Mason received his Bachelor of Science from the University of Texas at Dallas majoring in Supply Chain Management. His legal interests include immigration, criminal, and tort law.

© **Weston Mumme**, J.D. Candidate 2019, is an Articles Editor for Volume 20 of the Texas Tech Administrative Law Journal. He was born and raised in Austin, Texas. Weston received his Bachelor of Arts and Science in History from Texas Tech University in 2014. He is primarily interested in criminal defense.

β **Taylor Nichols**, J.D. Candidate 2019, is a Comment Editor for Volume 20 of the Texas Tech Administrative Law Journal. She grew up in Petersburg, a very small town northeast of Lubbock. She received her Bachelor of Business Administration in Marketing from Texas Tech University in 2014. Taylor currently serves as the Torts Tutor for Professor Cochran, Vice President of the Christian Legal Society, and is a member of the Organization of Women Law Students. Her primary legal interest is civil litigation.

★ **Elliott O’Day**, J.D. Candidate 2019, is the Executive Comment Editor and Case Law Update Editor for Volume 20 of the Texas Tech

Administrative Law Journal. Although he was born in Dallas, TX, his hometown is Fort Worth, TX. He graduated cum laude from Baylor University with a Bachelor of Arts in Film & Digital Media. His primary areas of interest are administrative law, alternative dispute resolution, estate planning, and family law.

η **María Oviedo**, J.D. Candidate 2019, is an Article Editor for Volume 20 of the Texas Tech Administrative Law Journal. María was born in San Miguel de Allende, GTO, Mexico, and moved to Granbury, Texas at the age of seven. She graduated Magna Cum Laude from Texas Tech University with a Bachelor of Arts in Political Science and a Bachelor of Arts in Spanish. María is the current president of the Immigration Law Association, and her primary interest is immigration law.

Σ **“Andrew” Travis Smith**, J.D. Candidate 2019, is an Article Editor for Volume 20 of the Texas Tech Administrative Law Journal. He is from San Antonio, Texas and received his Bachelor of Arts with Highest Honors from Texas Tech University in 2016, majoring in Honors Arts and Letters with minors in Legal Studies and Philosophy. He is primarily interested in estate planning, administrative law, and civil litigation.

δ **Holton Westbrook**, J.D. Candidate 2019, is the Executive Managing Editor for Volume 20 of the Texas Tech Administrative Law Journal. Holton was born and raised in Stephenville, Texas, the Cowboy Capital of the World. He attended Texas Tech University where he received a Bachelor of Science in Agricultural and Applied Economics, graduating Summa Cum Laude with Highest Honors. Holton’s legal interests include agriculture, energy, business, and water law.

Table of Contents

I. Introduction.....	5
II. Agency Authority.....	5

<i>Banda v. Tex. Bd. of Nursing</i> , NO. 13-16-0036, 2018 WL 2371641, 2018 Tex. App. LEXIS 3698 (Tex. App.—Corpus Christi May-Edinburg May 24, 2018, no pet.). μ.....	5
III. Agency Interpretation of Statutes and Rules	6
<i>Tex. Workforce Comm’n v. Wichita Cnty.</i> , 548 S.W.3d 489 (Tex. 2018). Σ	6
<i>Sullivan v. Tex. Ethics Comm’n</i> , No. 03-17-00392-CV, 2018 WL 2248275, 2018 Tex. App. LEXIS 3462 (Tex. App.—Austin May. 17, 2018, no pet.). Σ	7
IV. Discovery	8
V. Due Process.....	8
VI. Jurisdiction	8
A. Sovereign Immunity	8
<i>Wasson Interests, Ltd. v. City of Jacksonville</i> , 17-0198, 2018 WL 2449184, 2018 Tex. LEXIS 514 (Tex. Jun. 1, 2018). Χ	8
<i>City of Houston v. Houston Emp’t Pension Sys.</i> , 2018 WL 2749728, 2018 Tex. LEXIS 523 (Tex. Jun. 8, 2018). δ.....	9
<i>Hegar v. CHZP</i> , 2018 WL 3150839, 2018 Tex. App. LEXIS 4803 (Tex.App.—Austin Jun. 28, 2018). ¥.....	11
<i>Tex. ex rel. Best v. Harper</i> , 2018 WL 3207125, 2018 Tex. LEXIS 659 (Tex. Jun. 29, 2018). ¥.....	11
<i>Hughes v. Tom Green Cnty.</i> , No. 17-0409, 2019 WL 1119904, 2019 LEXIS 244 (Tex. Mar. 8, 2019). ©.....	12
<i>City of Killeen v. Cheney</i> , 03-18-00139-CV, 2018 WL 5832088, LEXIS 9146 (Tex.App.—Austin Nov. 8, 2018, no pet.). Σ.....	13
<i>Hillman v. Nueces Cnty.</i> , No. 17-0588, 2019 WL 1231341, LEXIS 267 (Tex. 2018, Mar. 15, 2019). η.....	14
<i>Harris Cnty. v. Falcon Hunter, LLC</i> , No. 14-18-00247-CV, 2019 WL 470400, 2019 Tex. App. LEXIS 871 (Tex. App.—Houston [14th Dist.] 2019, no subs. h.). θ	14
<i>Hays Street Bridge Restoration Group v. City of San Antonio</i> , NO. 17-0423, 2019 WL 1212578, LEXIS 266 (Tex. 2019, Mar. 15, 2019). ¥	15
<i>Rosenberg Dev. Corp. v. Imperial Performing Arts, Inc.</i> , No. 17-0660, 2019 WL 1090918, 2019 Tex. LEXIS 242 (Tex. Mar. 8, 2019). ©	16
B. Prerequisites to Suits	17
<i>Pressley v. Casar</i> , 567 S.W.3d 327 (Tex. 2019). Σ	17
C. Exhaustion of Remedies.....	18
D. Standing	18
<i>Meyers v. JDC/Firethorne, Ltd.</i> , 2018 WL 2749769, 2018 Tex. LEXIS 522 (Tex. Jun. 8, 2018). Χ18	
E. Right to Judicial Review	19
<i>In re Occidental Chem. Corp.</i> , 561 S.W.3d 146 (Tex. 2018). ζ.....	19
<i>Nunu v. Risk</i> , 567 S.W.3d 462 (Tex. App.—Houston [14th Dist.] 2019, no pet.). ©.....	20
<i>Badaiki v. Miller</i> , No. 14-17-00450-CV, 2019 WL 922289, 2019 Tex. App. LEXIS 1384 (Tex. App.—Houston [14th Dist.] Feb. 26, 2019, no pet.) (mem. op.). ©.....	21

F. Ultra Vires	22
<i>In re C.Y.K.S.</i> , 549 S.W.3d 588 (Tex. 2018). Σ	22
<i>Roach v. Ingram</i> , 557 S.W.3d 203 (Tex.—Houston [14th Dist. 2018] (mem. op.). ★	23
VII. Motions for Rehearing	24
VIII. Open Government: Public Information Act & Open Meetings Act.....	24
<i>Leander Indep. Sch. Dist. v. Office of Attorney Gen. for State</i> , 03-18-00243-CV, 2018 WL 6581523, LEXIS 10322 (Tex. App.—Austin Dec. 14, 2018, no pet.). Σ	24
IX. Orders.....	26
<i>Texas S. Univ. v. Kirksey Architects, Inc.</i> , 14-18-00146-CV, 2019 WL 922296, LEXIS 1390 (Tex. App.—Houston [14th Dist.] Feb. 26, 2019, no pet. h.). β	26
<i>In re J.C.B.</i> , No. 14-18-00796-CV, 2019 WL 758403, 2019 Tex. App. LEXIS 1267 (Tex. App.—Houston [14th Dist.] Feb. 21, 2019, no pet.) (mem. op.). ©	26
X. Rules.....	27
<i>Calab, Inc. v. Tex. Dep’t of Aging & Disability Servs.</i> , No. 03-17-00711-CV, 2018 WL 5814980, 2018 Tex. App. LEXIS 9076 (Tex. App.—Austin Nov. 7, 2018). Σ	27
<i>Tex. Dep’t of Family and Protective Servs. v. Grassroots Leadership, Inc.</i> , No. 03-18-00261-CV, 2018 WL 6187433, 28 Tex. App. LEXIS 9643 (Tex. App.—Austin Nov. 28, 2018, no pet.) (per curiam) (mem. op.). η.....	28
<i>Sabre Travel Int’l v. Deutsche Lufthansa AG</i> , 567 S.W.3d 725 (Tex. 2018). η.....	29
<i>Ex parte City of El Paso</i> , No. 03-17-00566-CV 563, S.W.3d 517 (Tex.App.—Austin Nov. 7, 2018, pet. filed). θ.....	29
<i>Leniek v. Evolution Wells, LLC</i> , No. 14-18-00954-CV, 2019 WL 438825, 2019 Tex. App. LEXIS 2595 (Tex. App.—Houston [14th Dist.] 2019, mot’n granted and rem’d). θ.....	30
<i>Loving Cnty. Appraisal Dist. v. EXLP Leasing, LLC</i> , 563 S.W.3d 213 (Tex. 2018). ★.....	31
<i>S. Concepts, Inc. v. Tex. Dep’t of Aging & Disability Servs.</i> , NO. 03-17-00712-CV, 2018 WL 5814093, 2018 Tex. LEXIS 9078, (Tex. App.—Austin, Nov. 7, 2018, no subs. h.). v	31
<i>State ex rel. Best v. Harper</i> , 562 S.W.3d 1 (Tex. 2018). ¥	32
<i>Tex. Assoc. of Bus. v. City of Austin</i> , 565 S.W.3d 425 (Tex.—Austin 2018, pet. filed). δ.....	34
XI. Utilities.....	35
XII. Miscellaneous	35
<i>In re State ex rel. Escamilla</i> , 561 S.W.3d 711, 713 (Tex. App.—Austin 2018, no pet.). β	35
A. Plea to the Jurisdiction	35
<i>Harris Cnty. v. Annab</i> , No. 17-0329, 2018 WL 2168484, 2018 LEXIS 402 (Tex. May 11, 2018). V	35
<i>Oncor Elec. Delivery Co. v. Elec. Delivery Co., LLC</i> , 546 S.W.3d 133 (Tex. 2018). V	36

Tex. Civil Commitment Office v. Hartshorn, 550 S.W.3d 319 (Tex.—Austin 2018, reh’g denied). Σ37

Nazari v. Texas, 561 S.W.3d 495 (Tex. 2018). δ39

City of Wimberly Board of Adjustment v. Creekhaven, LLC, NO. 03-18-00169-CV, 2018 WL 5074580, LEXIS 8448 (Tex.App.—Austin, Oct. 18, 2018, no subs. h.). ★40

City of Houston v. Houston Mun. Emples. Pension Sys., 548 S.W.3d 566 (Tex. Jun. 8, 2018). δ...41

Badger Tavern, L.P. v. Hegar, No. 03-18-00291-CV, 2018 WL 4322383, 2018 Tex. App. LEXIS 7457 (Tex. App.—Austin Sept. 11, 2018, no pet.) (mem. op.). η43

Dentistry of Brownsville v. Tex. Health & Human Servs. Comm’n, NO. 03-17-00552-CV, 2018 WL 5074694, LEXIS 8447 (Tex.App.—Austin, Oct. 18, 2018, pet. filed). Δ44

Harris Cnty. v. Avila, No. 14-18-00182-CV, 2019 WL 1030332, 2019 Tex. App. LEXIS 1648 (Tex. App.—Houston [14th Dist.] 2019, no subs. h.). θ45

Sanchez v. Boone, No. 14-17-00981-CV, 2019 WL 1246518, LEXIS 2127 (Tex.App.—Houston [14th Dist.], no subs. h.). δ46

I. Introduction

This case law update includes many of the administrative law cases decided in Texas between May 2018 and May 2019. This is not an exhaustive review of all administrative law cases, nor do these synopses exhaustively cover all issues raised by these cases. We have attempted to choose cases representative of issues raised in Texas courts and to highlight the most salient points of each. Our views are not to be taken as the views of Texas Tech University School of Law and should not be interpreted as predictive of the result of future cases.

II. Agency Authority

Banda v. Tex. Bd. of Nursing, NO. 13-16-0036, 2018 WL 2371641, 2018 Tex. App. LEXIS 3698 (Tex. App.—Corpus Christi May-Edinburg May 24, 2018, no pet.). μ

This case centers on the interactions between the Texas Board of Nursing (Nursing Board), an administrative judge, and a nurse who faced sanctions due to an inappropriate relationship with a patient. The primary conduct took place up to May of

2013. After the conduct was brought to the Nursing Board’s attention, further inappropriate conduct allegedly took place after the patient was removed from Banda’s care.

An administrative law judge heard the case and reasoned that Banda did not violate nursing regulations because the relationship ended at the time of the discovery of the initial allegations. Because of this finding, the judge reasoned that because Banda did not violate the nursing rules, she should not face any suspension of her license from the allegations. The judge also offered an opinion that if the board found the alleged conduct did not end at the time the primary allegations were brought to the attention of the board, Banda’s license should face revocation.

In 2015 the Texas Nursing Board reviewed all of Banda’s allegations and concluded the judge did not properly apply the Nursing Board’s protocol and regulations concerning relationships with patients. The Nursing Board independently determined that the judge did not properly apply the statutes governing nurse-patient relationships and that grounds existed for reviewal of the previous decision. The board remanded the case back to the administrative law judge

with a finding from the board that the nurse-patient relationship continued and amended finding of facts.

Upon receipt of this, the judge amended the judgment and amended its own finding of facts to reflect the boards' findings. The judge also allowed the Nursing Board to attach its own amended conclusions that Banda violated the nurse-patient relationship parameters and that the judge should suspend Banda's nursing license in Texas for two years. The judge further inserted a finding that the board should ultimately determine what conduct does and does not violate its own law. Banda filed a plea to the jurisdiction and six other issues to the district court concerning the conduct of the Nursing Board and the judge. The district court ruled for the Nursing Board. The issue before the appellate court focused on the first issue, which asked if the Texas Nursing Board possessed the authority to remand a decision of the administrative law judge back for further consideration.

The appellate court focused on the question of whether the Nursing Board's decision to remand the case back to the judge for further consideration, the Nursing Board fulfilled its authority under its governing statutes or if the Nursing Board superseded its power and created new power for itself. Ultimately, the court found that the Board's action of remanding the case back to the judge essentially created a new power for itself and thus violated its power. The court stated the code did not allow the Nursing Board to remand a proposal to an administrative judge and provide a new proposal based on the Nursing Board's choice, and the court lacked any case precedent that justifies the Nursing Board's action. The court found that because the Nursing Board essentially told the judge to create a new proposal considering the Board's own findings, that it violated its authority.

The Nursing Board did possess the power to vacate or modify the decision, but it lacked the power under the law to remand the decision. The court remanded the case back to the Board and instructed it to review the case considering the court's findings. *Banda* stands for the proposition that when a state administrative agency may not violate statutory authority as it seeks to pursue its purpose. Even if the board does possess the power to achieve an objective in substance, it may not overreach procedurally in pursuit of that goal.

III. Agency Interpretation of Statutes and Rules

Tex. Workforce Comm'n v. Wichita Cnty., 548 S.W.3d 489 (Tex. 2018). Σ

Julia White worked for Wichita County (County). In August 2011 she went on unpaid leave under the Family Medical Leave Act (FMLA) for medical reasons. In September she informed the County that she received medical restrictions that required accommodations. In November, such a position became available and White returned to work. However, prior to her return, White filed a claim for unemployment benefits with the Texas Workforce Commission (Commission) on October 2nd. The County contested White's claim on grounds that she remained an employee of the County and, therefore, did not qualify. On October 25th, the Commission stated White was "unemployed" while on an unpaid leave of absence for a medically verifiable illness, and that she could be paid unemployment benefits *if* she met additional requirements.

The County appealed on grounds that White did not voluntarily leave work, was not fired, was not laid off, and never quit, but the Commission Appeal Tribunal affirmed. The County then filed for judicial review, wherein the trial county reversed the Commission's decision that White qualified for benefits.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Administrative Case Law Update

Also available as part of the eCourse

[2019 Advanced Texas Administrative Law eConference](#)

First appeared as part of the conference materials for the
14th Annual Advanced Texas Administrative Law Seminar session
"Case Law Update: Part I"