



Fanning Harper Martinson Brandt & Kutchin

## YEAR IN REVIEW - 2012

### FHMBK NAMED AMONG TEXAS' TOP RANKED LAW FIRMS FOR 2012

Fanning Harper Martinson Brandt & Kutchin, P.C., is proud to announce that it has earned a place on the 2012 Texas' Top Ranked Law Firms list published by the respected legal services information provider [Martindale-Hubbell](#).

In order to be considered for the exclusive listing, at least one-third of a firm's lawyers must possess an AV Preeminent rating from Martindale-Hubbell, the highest rating available.

"The [AV Preeminent rating](#) is reserved for lawyers recognized by their peers for the highest level of professional excellence," says [Don D. Martinson](#), director at Fanning Harper. "I'm impressed each day by the level of expertise, professionalism and the attention to detail that Fanning Harper lawyers demonstrate."

Only 217 firms are included in the list, which has been published in the *2012 Texas' Top Ranked Law Firms* magazine. The magazine was included in the Oct. 31, 2012, editions of *The Wall Street Journal* and *Texas Lawyer*, in addition to being delivered to Texas subscribers of *The American Lawyer*, *Corporate Counsel* and *The National Law Journal*.

FHMBK lawyers in the Martindale-Hubbell list earned an average peer-score rating of 4.9 on a five-point scale. Qualities considered for the ratings include lawyers' legal knowledge, analytical capabilities, judgment and legal experience. FHMBK attorneys also earned high scores from clients for their communication abilities, responsiveness, quality of service and value.

### DON MARTINSON and TOM BRANDT NAMED IMPACT PLAYERS OF THE YEAR

**DON MARTINSON and THOMAS BRANDT** were recently named "Impact Players" of 2011 by *Texas Lawyer*. Martinson and Brandt were recognized by *Texas Lawyer*

newspaper for their work in achieving favorable rulings in two of the state's most closely watched appellate cases in 2011.

**Mr. Brandt** was named to this list for his part in obtaining a significant victory before the entire assembled United States Court of Appeals for the Fifth Circuit in the famous "Candy Cane" case.

**Mr. Martinson** was recognized for his part in successfully arguing in the matter of *In Re Universal Underwriters of Texas Insurance Company* before the Texas Supreme Court and obtaining a significant victory not only for his client but for the entire insurance industry in Texas.

To read the firm's news release on these "game-changing" victories, [click here](#).

### **U.S. SUPREME COURT VICTORY**

**THOMAS BRANDT, JOSHUA SKINNER and DAVID UPHAM** successfully represented two elementary school principals before the United States Supreme Court in the famous "Candy Cane" case. The successful outcome was particularly remarkable given the fact that it was obtained against a legal "dream team" which included two former solicitors general of the United States (Paul Clement and Ken Starr), numerous former Attorneys General for the United States, numerous United States Secretaries of Education and numerous notable amicus organizations and legal scholars such as the American Center for Law and Justice and Jay Alan Sekulow. The plaintiffs sought review of the case by the Supreme Court in an effort to overturn the decision by the Fifth Circuit granting qualified immunity to two elementary school principals who were accused of preventing elementary school students from distributing religious materials to their classmates at school. The Fifth Circuit, sitting en banc with sixteen judges, held that the principals are entitled to qualified immunity from the lawsuit because the law involving religion and public schools was unclear. The plaintiffs sought Supreme Court review, but the Supreme Court rejected their request. As a result of our victory before the U.S. Supreme Court, we were able to secure dismissal of all of Plaintiffs' claims against three individual educators.

### **CHEERLEADER CASE ATTRACTS NATIONAL ATTENTION**

The "Kountze Cheerleaders' Case" (*Matthews, et al v. Kountze ISD and Kevin Weldon*), a case being handled by FHMBK attorneys **Thomas P. Brandt, Joshua Skinner and John Husted**, has attracted national attention. The case, though still in the early stages of litigation, has already been covered, sometimes on multiple occasions, by the major television networks as well as by the New York Times, the Los Angeles Times, the Wall Street Journal, and the Economist. The story has been covered on Good Morning America as well as other similar national broadcasts.

Widespread interest in the case has resulted in FHMBK receiving numerous requests for the most pertinent pleadings in the case. In order to address those requests, we have posted the most recent pleadings in the case [here](#).

### **VICTORY BEFORE THE U.S. COURT OF APPEALS**

**THOMAS P. BRANDT, JOSHUA SKINNER and DAVID UPHAM** successfully represented a Texas County before the United States Court of Appeals for the Fifth Circuit. The case involved a claim of First Amendment retaliation by a former sheriff's deputy. The plaintiff brought suit against the county alleging that his employment was terminated in retaliation for making public comment critical of the county judge. Mr. Skinner orally argued the case before a panel of the Fifth Circuit. The Fifth Circuit panel affirmed the decision of the district court granting summary judgment to the county, concluding that the comments allegedly made by the plaintiff were not protected by the First Amendment.

### **VICTORY BEFORE THE FORT WORTH COURT OF APPEALS**

**THOMAS P. BRANDT and JOHN F. ROEHM III** successfully represented several City councilmembers and City officials before the Fort Worth Court of Appeals in a case arising out of decisions made regarding a drilling permit. The case was orally argued by Mr. Brandt. The Court of Appeals agreed with our argument that the Plaintiffs lacked standing. As a result, the Court of Appeals affirmed the dismissal of our clients from the case.

### **JURY TRIAL VICTORIES IN FEDERAL COURT**

**THOMAS P. BRANDT, JOSHUA SKINNER and JENNIFER KELLEY** successfully represented a North Texas county and justice of the peace in a case involving allegations of disability discrimination and FMLA retaliation. Mr. Brandt successfully tried this case before a federal jury with U.S. District Judge A. Joe Fish presiding.

The plaintiff, who had worked for the justice of the peace, claimed that he had been fired because of his disability and because he had taken medical leave under the Family Medical Leave Act (FMLA).

The unanimous jury rejected the plaintiff's claims that he his employment was terminated based on his disability or medical leave rather than, as the justice of the peace explained, because of his poor performance at work.

**ROCKY LITTLE** of FHMBK and Charles Hanor of The Hanor Law Firm successfully defended an intellectual property lawsuit in Federal District Court in Dallas. Following a seven-day trial, a unanimous jury found that defendants did not infringe plaintiff's trademark or trade dress rights under federal law, and also that plaintiffs' state law

claims for unfair competition and “palming off” were without merit. The plaintiff was seeking actual damages along with punitive damages for willful infringement.

### **DISTRICT COURT VICTORIES**

**THOMAS P. BRANDT, JOSHUA SKINNER, and LAURA O’LEARY** successfully represented a North Texas community college district in an employment case alleging various Title VII claims, including that the former police officer employee was fired because of his race, ethnicity, religion, or in retaliation for his prior complaints. FHMBK moved for summary judgment. The federal district court granted summary judgment on all claims.

**THOMAS P. BRANDT and JOSHUA SKINNER** successfully represented a North Texas community college district in an employment case brought by two former police officer employees alleging that their employer violated Title VII by permitting a hostile work environment, by constructively discharging them, by failing to promote them and by retaliating against them for their prior complaints. FHMBK filed a motion to dismiss for failure to state a claim. The federal district court, holding that the plaintiffs’ complaint was deficient, ordered the plaintiffs to replead their complaint. The plaintiffs failed to replead and FHMBK moved for dismissal for want of prosecution. The district court granted the motion and dismissed the case with prejudice.

**THOMAS P. BRANDT, JOSHUA SKINNER, and LAURA O’LEARY** successfully represented a North Texas school district in a case involving allegations that student-on-student bullying led to the suicide of an elementary school student. The plaintiffs alleged that the school district violated various special education laws as well as the United States Constitution. FHMBK moved for summary judgment, pointing to the lack of evidence that bullying had occurred, that it had caused the death of the child, or that school officials failed to properly respond to allegations of bullying. The federal district court granted the motion, dismissing all claims against the school district.

**THOMAS P. BRANDT and JOSHUA SKINNER** successfully represented an elementary school principal in the latest round of the long-running “Candy Cane” case. The plaintiffs alleged that the principal had violated the First Amendment rights of a parent who wished to distribute religious messages to other parents during an in-class “winter break” party. The principal told the parent that outside materials could be distributed on a distribution table in the library, but not in the classroom. FHMBK moved for dismissal of the claims against the principal based on qualified immunity. The federal magistrate judge recommended that the motion be granted, noting the lack of clarity in the law regarding the free speech rights of parents when attending school events.

**THOMAS P. BRANDT, JOSHUA SKINNER, and JOHN HUSTED** successfully defended the City Manager and several City Councilmembers of a North Texas City in an employment case brought by the former director of the City’s recreation department.

FHMBK attorneys successfully defended the city officials against the former director's allegations that she was denied her procedural and substantive due process rights when she was terminated.

**THOMAS P. BRANDT and FRANK VALENZUELA** successfully defended a North Texas independent school district against a claim of employment retaliation asserted by a former employee. FHMBK moved for summary judgment, pointing to the fact that the former employee had made no complaint that could serve as the basis for her claim and that the district was justified in terminating her based on her misconduct. The state district court dismissed the retaliation claim against the school district.

**THOMAS P. BRANDT, FRANK VALENZUELA, and LAURA O'LEARY** successfully defended a private substance abuse treatment center from the claims of two former clients. FHMBK moved to dismiss the plaintiffs' claims, arguing that they had abandoned their claims and did not participate in the discovery process in violation of the rules of procedure and the court's order. The federal district court dismissed the two plaintiffs' claims with prejudice.

**THOMAS P. BRANDT, JOSHUA SKINNER and LAURA O'LEARY** successfully represented a North Texas school district against allegations that school district officials had attempted to intimidate witnesses and destroy evidence in a civil case involving allegations that student-on-student bullying led to the suicide of an elementary school student. FHMBK presented extensive evidence demonstrating the falsity of the plaintiffs' claims. The federal district court denied the plaintiffs' motion and praised the school district administrator for her sensitive and appropriate conduct.

**THOMAS BRANDT and JOHN F. ROEHM III** successfully represented a North Texas Police Department sued in federal court for federal constitutional violations. A motion to dismiss was filed on behalf of the Police Department. The Magistrate Judge has recommended that the motion be granted and the case be dismissed.

**THOMAS BRANDT, FRANCISCO J. VALENZUELA, and LAURA O'LEARY** successfully represented a major North Texas school district in a case involving allegations of whistleblower retaliation, national origin employment discrimination, and employment retaliation. After a hearing on the District's motion for summary judgment, an associate judge entered summary judgment in favor of the school district.

**FRANCISCO J. VALENZUELA** successfully obtained the dismissal with prejudice of the claims of 17 plaintiffs in a case about federal privacy rights, negligence, and negligence per se. The dismissal of the 17 plaintiffs was premised on the plaintiffs' failure to prosecute their claims and respond to discovery, as well as their failure to comply with court orders.

**THOMAS BRANDT and JOHN D. HUSTED** successfully represented a North Texas sheriff and various officers sued in federal court for alleged civil rights violations and a series of state law claims, including false imprisonment, invasion of privacy, and

malicious prosecution. A motion to dismiss was filed on behalf of the officers. The court granted the motion and dismissed all claims in the case.

**THOMAS BRANDT and JOHN F. ROEHM III** successfully represented a North Texas city which was sued in federal court for excessive force and having deficient policies, practices and customs regarding use of force. A motion to dismiss was filed and Plaintiff chose to dismiss her suit with prejudice.

**THOMAS BRANDT and JOHN F. ROEHM III** represented the President of the Board of Trustees of a major North Texas school district who was sued by a former teacher for business disparagement. The teacher alleged that the Board President's comments to the press during an interview prevented him from being hired as a teacher. A motion for summary judgment was filed on behalf of the Board President on the grounds of immunities and First Amendment protection. The court granted the motion and dismissed the case.

**THOMAS BRANDT and JOSHUA SKINNER** successfully represented a North Texas school district and several of its officials who were sued for various civil rights violations arising out of injuries sustained by a disabled student. The District Court dismissed with prejudice all of the claims brought against the individual school officials. The District Court also dismissed Plaintiff's §1983 claim based upon the state-created-danger theory and Plaintiff's claims for punitive damages.

**THOMAS BRANDT, JOSHUA SKINNER and LAURA O'LEARY** successful represented a local governmental entity in a suit which sought declaratory relief, damages and attorney's fees. The suit focused on the ownership of a 124 acre parcel of real property. The District Court in Collin County agreed with our arguments and granted our plan to the jurisdiction. All claims against the entity and its former president were dismissed with prejudice.

**THOMAS BRANDT and JOSHUA SKINNER**, along with a North Texas City Attorney's office, its police department, and the Attorney General's office, successfully prosecuted a nuisance abatement action against a topless bar in Arlington. As a result of the joint efforts, the topless bar agreed to close its doors for one year, the maximum time for abatement under the nuisance abatement statute.

**THOMAS BRANDT and JOSHUA SKINNER** obtained the dismissal of breach of contract claims against a West Texas junior college and one of its professors. The plaintiff, a former student, brought suit alleging that the college and professor had failed to follow various policies or procedures relating to the grading and evaluation of written assignments. Motions to dismiss were filed on behalf of the defendants. The court dismissed the breach of contract claims, holding that there was no waiver of governmental immunity as to the college and that the professor was not a party to the "contracts" in question.

**THOMAS P. BRANDT and JOHN HUSTED** successfully defeated malicious prosecution claims against a North Texas County prosecutor and another County employee.

**THOMAS P. BRANDT and JOHN HUSTED** successfully defended a Clerk of the Court of a West Texas County against various civil rights and conspiracy claims brought by a group of over 70 plaintiffs. The plaintiffs alleged that they were descendants of individuals who owned property in the County at the turn of the last century and that the Clerk's predecessor in interest aided and conspired in the wrongful dispossession of their ancestors' land. The Court agreed with our arguments and dismissed our clients from the case.

**THOMAS P. BRANDT, JOSHUA SKINNER, and JOHN HUSTED** successfully represented a North Texas school district, its superintendent, board of trustees and numerous employees against various claims of age and race discrimination, retaliation, and conspiracy brought by a former administrator with the district.

**THOMAS P. BRANDT, FRANK VALENZUELA, and LAURA O'LEARY** represented a North Texas school district which was sued in state court for various employment related claims, including national origin hostile work environment and retaliation. The school district prevailed on summary judgment on the hostile work environment and retaliation claims.

**THOMAS P. BRANDT, JOSHUA SKINNER, and LAURA O'LEARY** successfully defeated a challenge to the F-5 termination notice provided to a deputy constable when his employment was terminated by an east Texas county. The deputy constable challenged the official record of his termination maintained by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE), claiming that his employment was terminated in retaliation for reporting official misconduct by the constable rather than, as explained by the constable on the termination form, because of his poor performance at work. The county filed a motion to dismiss the challenge, which was granted by the administrative judge responsible for overseeing the dispute.

**THOMAS P. BRANDT and JOHN F. ROEHM III** successfully represented a North Texas County and its Sheriff who were sued in federal court by a jailer for age and sex discrimination and unlawful employment practices. The Sheriff was dismissed from the suit and the court granted summary judgment for the County.

**THOMAS P. BRANDT, JOHN F. ROEHM III, and LAURA O'LEARY** represented a north Texas School Board President who was sued for business disparagement. We filed a motion for summary judgment which was granted. Plaintiff appealed and we filed a motion to dismiss the appeal which was granted.

## SPEECHES, PUBLICATIONS AND MEDIA APPEARANCES

Because of his recognized expertise, **THOMAS P. BRANDT** is frequently asked to comment on current legal issues. Mr. Brandt has given local radio and television interviews on such topics as affirmative action, civil rights, and municipal liability.

- To view all of Mr. Brandt's most recent television appearances, click [here](#).
- To listen to the audio of Mr. Brandt's appearance on KLIF-AM 570 with Kurt Gilchrist, click [here](#).

**THOMAS BRANDT, JOSHUA SKINNER and LAURA O'LEARY** made presentations at a seminar sponsored by the National Business Institute ("NBI"). The seminar was held in Fort Worth on November 28, 2012. The title of the seminar was "Texas Special Education Law." Mr. Brandt and Mrs. O'Leary spoke on the topic "Establishing the Framework of Special Education Law." Mr. Skinner spoke on the topic "Protecting the Rights of Children with Special Needs."

**Thomas Brandt** was selected, once again, to serve on the planning committee for the State Bar of Texas' legal seminar entitled "Suing and Defending Governmental Entities." The course will be held in Austin in July of 2012.

**Thomas Brandt** spoke at the Texas Association of School Board Risk Management Fund's annual member's conference in Austin, Texas on April 16, 2012. Mr. Brandt spoke about his victory in the famous "Candy Cane" case and about what the victory means for school districts and their officials and employees.

**Joshua Skinner, John Husted, and Laura O'Leary** co-authored a paper entitled "Religion in the Public Square." The paper was published by the State Bar as part of its 24<sup>th</sup> Annual Suing and Defending Governmental Entities Course.

**Thomas Brandt** spoke on the topic of Religious Liberty at the State Bar's Annual Suing and Defending Governmental Entities seminar in August on July 26, 2012. Following his address, Mr. Brandt moderated a panel discussion regarding current issues in religious liberty which local governmental entities are facing.

**Frank Valenzuela** spoke on the topic of the Americans with Disabilities Act before the Texas Municipal League's Intergovernmental Risk Pool's Attorney Workshop held in Austin on August 24, 2012.

**Joshua Skinner** was featured on a podcast for the Federalist Society speaking on the Supreme Court's recent decision *Messerschmidt v. Millender*, which turned on the application of the doctrine of qualified immunity to police officers involved in the search of a residence. The podcast is available at <http://www.fed-soc.org/publications/detail/messerschmidt-v-millender-post-decision-scotuscast>. (March 9, 2012)

**Joshua Skinner** spoke at the State Bar of Texas Bill of Rights Conference 2012 on May 18 on the topic of “Lawsuits Against the Government.”

**Joshua Skinner** spoke at the State Bar of Texas Government Law Boot Camp 2012 on July 25 on the topic of “The Basics of Qualified Immunity.”

**Frank Valenzuela** spoke on the topic of “Religious Liberty: Current Issues” as part of a CLE seminar. The seminar entitled “Religious Liberty: America’s First Freedom” was held on June 22, 2012 and sponsored by the St. Thomas More Society, Catholic Lawyers Guild.

**Frank Valenzuela** spoke on the topic of “Religion in Schools: Morgan v. Swanson and Hosanna Tabor” at a luncheon CLE presentation at the Belo Mansion on February 2, 2012.

**Frank Valenzuela and Laura O’Leary** co-authored the paper titled “Americans with Disabilities Act – Employment Claims.” Ms. O’Leary presented the paper at the State Bar of Texas’ Suing and Defending Governmental Entities conference. (July 26-27, 2012)

**Frank Valenzuela** spoke to Terrell Independent School District on “Social Media Issues – Virtual Friends/Real Problems in Schools” on April 2, 2012.

**Frank Valenzuela** was featured on August 14, 2012 on a podcast for The Federalist Society about the U.S. Supreme Court’s *Filarsky v. Delia* case which concerns qualified immunity issues. The podcast is available at <http://www.fed-soc.org/publications/detail/filarsky-v-delia-post-decision-scotuscast-2>.

**Frank Valenzuela** appeared on CBS 11 Television news on May 21, 2012. Frank was interviewed about the lawsuits which had just been filed by the Dallas Diocese and 42 other Catholic entities seeking to enjoin enforcement of the HHS mandate.

**Frank Valenzuela** made numerous appearances and presentations to various local community groups regarding legal issues involved with the Supreme Court’s decision regarding ObamaCare and the litigation involving the controversial HHS mandate.