

# DARLENE PAYNE SMITH



Shareholder and Mediator

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## Overview

Darlene Payne Smith is a member of the firm's Fiduciary Litigation Group and the firm's Probate, Trust and Guardianship Administrative Group. She also mediates two cases per month.

Her practice is focused on individuals who have experienced a loss or are facing the issue of a loved one who is becoming incapacitated or suffered a traumatic injury that rendered them incapacitated and individuals and trust companies who serve as fiduciaries. Darlene fights to uphold the wishes of those who have established valid estate plans and she defends fiduciaries wrongfully accused. She also seeks justice against fiduciaries who have wronged their beneficiaries.

As a result, Darlene often appears in courts in Harris, Montgomery, Brazoria, Galveston, Fort Bend, Brazos, San Jacinto, Chambers, Walker, Tarrant, Travis, Dallas and Jefferson Counties, as well as in Hildago and Cameron Counties.

Darlene represents fiduciaries and beneficiaries in trial and appellate courts of those counties, and across the State of Texas, in matters relating to probate, guardianship, trust litigation and administration.

Because of her knowledge and skill, Darlene often is sought to help resolve disputes or to improve the knowledge of fellow attorneys. She is a frequent writer and speaker for the State Bar and other entities of continuing legal education.

Darlene is an adjunct professor at South Texas College of Law. She is a co-author of the Texas Jury Charge publication for Probate and

## Practices

[Fiduciary Litigation](#)

[Probate, Trust and Guardianship](#)

## Education

- J.D., University of Houston Law Center
- B.S. magna cum laude, Criminal Justice, University of Houston

## Admissions & Certifications

- State Bar of Texas
- United States District Court for the Southern District of Texas

Trust and a sustaining member of the Pattern Jury Charge Committee. She is also a mediator of probate, trust, guardianship, and related matters.

Darlene has been honored many times over the years for her accomplishments including being selected to the 2006-2011 and 2014-2019 Texas Super Lawyers lists (Thomson Reuters). Most recently, she was selected to be in the 2019 Inaugural edition of Texas Trailblazers published by *Texas Lawyer*.

## Affiliations

- Certified under Texas Estates Code to serve as an appointee and represent persons and entities in guardianships
- South Texas College of Law, adjunct professor, 2010-2017
- State Bar Pattern Jury Charge Committee, member, 2010-2012
- Houston Bar Association Elder Law Committee, co-chair, 2010
- Texas Bar Association, member
- Texas Bar College, member
- Houston Bar Association, member
- National Association of Elder Law Advisors (NAELA), member
- Women Attorneys in Tax and Probate, past president
- Disability and Elder Law Lawyers Association, past vice president
- NAELA, former trust committee member

## Honors & Awards

- Texas Trailblazers, Texas Lawyers, 2019
- Texas Super Lawyers, Thomson Reuters, 2006-2011, 2014-2019

## Publications & Presentations

- *Estates, Trusts, Powers of Attorney, Mental Commitments, and Guardianships: Dealing with Firearms*, speaker/co-author, 8th Annual Firearms Law: What Every Texas Lawyer Needs to Know Course, State Bar of Texas, Austin, 2019
- *Changes in Guardianships and Powers of Attorney – What every Attorney Should Know*, speaker/co-author, 12th Annual Summer School: What Sun, Sand, and CLE for the General Practitioner, State Bar of Texas, Galveston, 2019
- *Guardianships: What Do You Do When Your Client is Not all There?*, speaker/co-author, 44th Annual Advanced Family Law Course, State Bar of Texas, San Antonio, 2018
- *What Every Lawyer Needs to Know 2018*, panelist, 7th Annual Course on Firearms Law, State Bar of Texas, San Antonio, 2018
- *19th Annual Advanced Courses Guardianship Law and Elder Law*, course director, State Bar of Texas, Dallas, 2018
- Course Director, 12th Annual Fiduciary Litigations Course, State Bar of Texas, San Antonio, 2017

- *Elder Abuse, The Criminal Aspects of Estates and Guardianships, and Mental Commitments*, speaker/co-author, The University of Texas School of Law, Galveston, 2017
- *Building Blocks of Wills, Trusts and Estates*, speaker, State Bar of Texas, Live Webcast, Austin, 2017
- *Elder Abuse and the Criminal Aspect of Estates, Guardianships, and Mental Commitments*, speaker/co-author, Montgomery County Bar Association Fall Conference, The Woodlands, 2016
- *Elder Abuse and the Criminal Aspect of Estates, Guardianships, and Mental Commitments*, speaker/co-author, 40th Annual Advanced Estate Planning and Probate Course, San Antonio, 2016
- *Legislative Update of 2015 Session*, speaker/author, Montgomery County Law Day, Conroe, 2016
- *Best Practices in Communication and Supervision on the Legal Team*, speaker/author, State Bar of Texas, 34th Annual Texas Forum Towards a More Perfect Union: Attorney and Paralegal Team, Austin, 2016
- *The Estate Administration Guide*, speaker, State Bar of Texas, 17th Annual Building Blocks of Wills, Estates, and Probate Course, Austin, 2016

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- *Ancillary Documents Should Not be an Afterthought*, speaker/author, State Bar of Texas, 10th Annual Fiduciary Litigations Course, San Antonio, 2015
- *Criminal Aspects of Guardianship and Mental Commitment*, speaker/co-author, State Bar of Texas, Handling Your First (or Next) Guardianship Case, Austin, 2015
- *Assessing Competency and Making the Decision to Wind Down – Lessons from the Baseball Diamond*, speaker/co-author, State Bar of Texas, Essentials of Winding Down A Law Practice in Texas, Austin, 2015
- *Using a Paralegal in Your Practice: What they Can and Cannot Do*, speaker, State Bar of Texas, Webcast, Austin, 2015
- *Who's Handling Mama's Money*, speaker/author, State Bar College Summer School, Galveston, 2015
- *Little Known Statutes/Issues Relating to Fiduciary Litigation*, speaker/author, National Board of Trial Advocacy, New Business: Learn New Cause of Action Continuing Legal Education, Houston, 2015
- *Little Known Statutes/Issues Relating to Fiduciary Litigation*, speaker/author, 9th Annual Fiduciary Litigation Course, Horseshoe Bay, 2014
- *What Options Exist when you Recognize a Problem?*, speaker/co-author, Lawyer Competence in the 21st Century, Austin, 2014

- *Estate Administration A to Z*, speaker, 63rd Annual Education Conference and National Forum, 2014
- *Criminal Aspects of Guardianship and Mental Commitment*, speaker/co-author, Advanced Elder Law and Advanced Guardianship Law Course, 2014
- *Powers of Attorney, Common Law Spouses and Guardianships*, speaker/author, Transitional Learning Center, Galveston, 2013
- *Criminal Aspects of Guardianship and Mental Commitment*, speaker/co-author, Advanced Elder Law and Advanced Guardianship Law Course, 2014
- Criminal Justice Symposium and Community Day, speaker, Houston
- *Practical Aspects of Guardianship Law*, speaker, Texas College of Probate Judges, San Antonio, 2012
- *Will and Guardianship Contests (Limine, Voir Dire, Opening, Preserving Errors, Charge and Closing)*, speaker/author, State Bar College, Summer School, Galveston, 2012
- *Handling Insolvent Estates and the Claims Process*, speaker/author, Houston Northwest Bar Association, Houston, 2012
- *Fiduciary Administration (Common Sense Approach)*, speaker/author, Lorman Education Services, Houston, 2012
- *Fiduciary Litigation – Practical Approach*, speaker/author, DELAA, Houston, 2012
- *Trial of a Guardianship*, speaker/author, Wills & Probate Institute, Houston, 2011
- *Probate, Guardianship and Trusts, Where are we Now?*, speaker/author, Advanced Estate Planning and Probate Course, Fort Worth, 2011
- *Trial of a Guardianship*, speaker/author, Advanced Guardianship Law Course, Houston, 2011
- *Divorce and Annulment In the Elderly*, speaker/author, National Academy of Elder Law Attorneys, Inc., Orlando, 2010
- *Estate Planning No Matter How Big or How Small*, speaker, Sharpstown Rotary Club, Houston, 2010
- *Getting to Victory: Winning Techniques in Fiduciary Litigation*, speaker/author, Trial of a Fiduciary Litigation Case, Fredericksburg, 2009
- *Estate Planning No Matter How Big or How Small*, speaker, St. Edward Catholic Church, Spring, 2009
- *Guardian Ad Litem in a Personal Injury Case: Deal or No Deal*, Austin, Texas, speaker, State Bar of Texas Webcast, Austin, 2009
- *Complex Family Matters in Guardianship*, speaker/author, State Bar of Texas Advanced Guardianship Course, Houston, 2009
- *Drafting and Entering Judgments*, speaker/author, Attorneys

In Tax & Probate, 2009

- Advisory Committee: Advanced Elder Law and Guardianship Courses, 2009
- *Expert Testimony*, speaker/author, Tarrant County Probate Bar Association – Sixth Probate Litigation Seminar, Ft. Worth, 2008
- *Ask The Experts: Guardianship Topics including Medical Issues in Guardianships*, speaker, Estate Planning, Guardianship and Elder Law Conference, Galveston, 2008
- *Drafting and Entering Judgments*, speaker/author, Advanced Estate Planning and Probate Course, Dallas, 2008
- *The Role of The Ad Litem*, speaker/author, Texas College of Probate Judges Regional Workshop, Corpus Christi, 2008
- *Show Cause, Contempt, Surcharge, and Injunctive Actions*, speaker/author, Texas College of Probate Judges Regional Workshop, Corpus Christi, 2008
- *Medical Experts: Can Yours Withstand Cross?*, speaker/author, State Bar of Texas Advanced Guardianship Course, Dallas, 2008
- *Major Provisions of a Trust*, speaker/author National Business Institute Fundamentals of Trust Administration, Houston, 2007
- *Essential Steps in Trust Termination*, speaker/author, National Business Institute Fundamentals of Trust Administration, Houston, 2007
- *Overcoming Ethical Challenges*, speaker, National Business Institute Fundamentals of Trust Administration, Houston, 2007
- *File Documentation, Retention & Destruction: i.e. Will Your Notes Nail You?*, speaker/co-author, State Bar of Texas Advanced Drafting Course for Estate Planning and Probate, Houston, 2007
- *Fiduciary Litigation*, speaker/co-author, Trust Administration in Texas, Houston, 2007
- *Fiduciary Administration*, speaker/author, Trust Administration in Texas, Houston, 2007
- *Getting to Victory: Special Issues: Jury Charge*, speaker/author, Advanced Estate Planning and Probate Course 2007; San Antonio, 2007
- Texas Guardianship Association Spring Conference, speaker/author, Waco, Ethics Panel, 2007
- National Academy of Elder Law Attorney, Inc., Trust Special Interest Group Steering Committee, advisor, 2006 to present
- *Contested Guardianships*, speaker, State Bar of Texas - Advanced Elder Law & Guardianship Course, Houston, 2007
- *Fiduciary Litigation*, speaker/co-author, DELAA, Houston, 2007
- *Ethical Jeopardy*, speaker/author, HBA All Day Ethics Program; Houston, 2006
- *Navigating the Quagmire of Potential Claims Against Estate Planning, Trust, Probate and Guardianship Practice*, speaker, South Texas College of Law Wills and Probate Institute, Houston, 2006

- *Expert Qualification and Disqualification in Probate and Fiduciary Litigation*, speaker/moderator, Advanced Estate Planning and Probate Course, Houston, 2006
- *Giving Till it Hurts You*, speaker/author, Planned Giving Council of Houston – Monthly Program, Houston, 2006
- *Personal Injury Involving Probate From Beginning to end or Avoiding the Silver Bullets That Can Kill Your Case*, speaker/author, Texas Trial Lawyers Association – Advanced Personal Injury Seminar, Houston, 2006
- *Promoting the Well-Being of the Proposed Ward*, speaker/co-author, State Bar of Texas – Advanced Guardianship Course, Dallas, 2006
- *The Role of the Attorney Ad Litem in a Contested Guardianship Proceeding*, speaker, Houston Bar Association – Guardianship Certification Course For Ad Litem Appointments 2006, Houston, 2006
- *Avoiding The Silver Bullets That Can Kill Your Case*, speaker/author, Jefferson County Bar Association CLE – Avoiding Malpractice, Beaumont, 2005
- *Personal Injury Involving Probate From Beginning to End or Silver Bullets That Can Kill Your Case*, speaker/author, Tarrant County Probate Bar Association – Litigation Seminar, Ft. Worth, 2005
- *Investment Plans and Guardianships*, speaker, South Texas College of Law – Wills and Probate Institute, Houston, 2005
- *Personal Injury Involving Probate From Beginning to End or Silver Bullets That Can Kill Your Case*, speaker/author, State Bar of Texas – Avoiding Malpractice, Houston, 2005
- *Personal Injury Involving Probate From Beginning to End or Silver Bullets That Can Kill Your Case*, speaker/author, State Bar of Texas – Avoiding Malpractice, San Antonio, 2005
- *Personal Injury Involving Probate From Beginning to End or Silver Bullets That Can Kill Your Case*, speaker/author, State Bar of Texas – Avoiding Malpractice, Dallas, 2005
- *Giving Till it Hurts You*, speaker/author, El Paso Planned Giving Counsel, University of Texas at El Paso, El Paso, 2005
- *The Probate Process from Start to Finish*, speaker, National Business Institute, Houston, 2005
- *Guardianship Alternatives and Settling Contested Guardianships*, speaker, H.B.A. Speech to the Elderly, Houston, 2005
- University of Houston Wills and Probate Advisory Committee, adviser, 1995-present
- *The Disability and Elder Law Attorneys Association*, speaker, Case Law Update, Reliant Decision, Houston, 2005
- *Court-Created 867 Trusts Practical Approach*, speaker/author, TBA Trust Financial Services Division, Court Created Trusts Seminar, Dallas, 2005



- *Will Your Notes Nail You? (Notes, Video, Audio, Emails, Comments and Other Faux Paus That Cause Problems)*, speaker/author, Houston Estate and Financial Forum; Houston, 2004
- *Dealing with the Difficult Client and/or Beneficiary*, speaker/author, Texas Bankers Association Personal Trust Seminar; Dallas, 2004
- *Jury Charges In Probate*, speaker/author, Tarrant County Probate Bar Association 3rd Annual Probate Litigation Seminar; Fort Worth, 2004
- *Giving Till it Hurts You*, speaker/author, Texas State Bar, Charitable Giving Course; San Antonio, 2004
- *How Your Notes Can Get You Into Trouble*, speaker/author, Advanced Estate Planning and Probate Course; San Antonio, 2004
- *Dependent Administrations*, speaker/co-author, Wills and Probate Institute, University of Houston Law Foundation, Houston, 2004
- *Independent Administration*, speaker, El Paso Probate Bar Association, Texas College of Probate Judges, 2004
- *Probate Surcharge and Preliminary Proceedings*, speaker/co-author, El Paso Probate Bar Association, Texas College of Probate Judges, 2004
- *Fiduciary Litigation 2004*, speaker/author, Texas Bar CLE, Houston, 2004
- *Anniversary of Brown v. Board of Education*, speaker, Klein Forest High School, 2004
- *Will Your Notes Nail You? (Notes, Video, Audio, Emails, Comments and Other Faux Paus)*, speaker/co-author, State Bar of Texas – 14th Annual Advanced Drafting Estate Planning and Probate Course; Dallas, 2003
- *Avoiding Sudden Death or at Least Temporary Incapacitation of your Case in Probate Court – Including Jurisdiction and Probate*, speaker, Tarrant County Probate Bar Association Second Annual Probate Litigation Seminar, 2003
- *Probate Issues in a Personal Injury Case*, speaker, Advanced Personal Injury Law Course, San Antonio, 2003
- *Probate Issues in a Personal Injury Case*, speaker, Advanced Personal Injury Law Course, Houston, 2003
- *Probate Issues in a Personal Injury Case*, speaker, Advanced Personal Injury Law Course, Dallas, 2003
- *State Bar of Texas - Texas Guardianship Manual*, manual committee, 2003
- *Guardianship Certification Course for Ad Litem Appointments in Probate Court*, speaker, South Texas Collage of Law, 2003
- *Victoria Area Estate Planning Counsel, Court Created Section 867 Trusts*, speaker, 2002
- *State Bar of Texas Advanced Estate Planning and Probate*

Course, speaker, 2002

- Wills & Probate Institute, University of Houston Law Foundation, advisory committee, 2002
- *Representing the Elderly Client*, speaker, South Texas College of Law, 2002
- *Docket Call in Probate Courts Seminar*, speaker, San Antonio Young Lawyers Association, 2002
- *The Role of The Ad Litem*, speaker, Judge Rory Olsen's Class on Chemical Dependency, 2001
- University of Houston Law Center, Wills and Probate Institute Course, speaker, 2001
- State Bar of Texas Advanced Estate Planning and Probate Course, course director, 2001
- Texas Collection Manual - Third Edition: Probate and Guardianship Section, author, 2001
- South Texas College of Law - Estate Planning & Probate - Creditor Claims, guest lecturer, 2001
- Houston Bar Association - Family/Probate Bench Bar Conference, speaker/facilitator, 2000
- *Show Cause, Contempt, Surcharge, and Injunctive Actions*, speaker/author, Texas College of Probate Judges, 2000
- *Anatomy of a Will*, speaker/author, Tarrant County Bar Association – Probate Section, 2000
- *Ten Unanswered Questions in Probate*, speaker/author, State Bar of Texas – Advanced Estate Planning and Probate, 2000
- *Legal Speaking*, speaker, KSEV Radio Talk Show, 2000
- *Show Cause, Contempt, Surcharge, and Injunctive Actions*, speaker, Disability and Elders Law Attorneys Association, 2000
- *How to Initiate a Guardianship*, speaker, San Antonio Young Lawyers Association, 2000