

Appeals Case # 13-15-307 (previously 03-15-357)
Travis District Court Case # D-1-GN-13-001230
Hamilton v Davila
Alan L. Hamilton
9902 Childress Dr
Austin, Texas 78753
512-832-6384
AlanHamilton@ProBaitCourt.com

October 7, 2015

Dorian E Ramirez
13th COA Court and Clerk
NUECES COUNTY COURTHOUSE
901 LEOPARD, 10TH FLOOR
CORPUS CHRISTI, TEXAS 78401
361-888-0416 (TEL)
361-888-0794 (FAX)

VIA ELECTRONIC FILING
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Dear Clerks and Appeals Court,

This is in response to your letter dated 9/28/2015, (6:04pm via email). A 10 day response would then be due on 10/8/2015. The following are the reasons for the late brief.

Table of Contents

Table of Contents.....	1
Motions.....	2
Appeals Clerk should have rejected defective Clerk's record	2
Authorities	3
Health issues	3
Companion Case time requirements	4
Basis of Brief	5
Summary.....	5
Exhibits	7

Exhibit List:

Exhibit A - 1_7-24-2015-Letter-heart-hand docs from Dr Pekar-6 pgs

Exhibit B – 2_AHA-Bradycardia _ Slow Heart Rate

Exhibit C – 3_Screenshot of defective Clerk's Record

Exhibit D – 4-Dels AC replacement receipt-5100 dollars

Exhibit E - 5-Pro Bono rejection letter

Motions

Appeals Clerk should have rejected defective Clerk's record

The reasons the brief is late have been described at length in the previously filed Motion:

“Unopposed First Motion for Extension of Time to file Appellant’s Brief, with Motion for Clerk’s Record to be fixed”, (herein referred to as “Motion1”).

These are further delineated below in the “Authorities” section, and in the forthcoming Motion for Contempt, which is currently being finished and will be filed next week:

“Motion for Contempt of Court Against Travis County District Clerk for Violation of Texas Supreme Court Order per Minimum Electronic Document Standards”, (herein referred to as “Motion2”)

It was a shock that an unopposed Motion for the benefit of all to be able to fix a bug to be able to read the court documents, would need a Texas Supreme Court Order to be granted. But indeed, the Texas Supreme Court Orders, minimum electronic document standards, be met for all court documents, with the inclusion of DESCRIPTIVE BOOKMARKS in a multi-file pdf document, REQUIRED EXPLICITLY, as we had logically requested in the original “Motion1”, and to be requested via a Texas Supreme Court Order in “Motion2”.

Authorities

1) Texas Supreme Court Orders (#13-9165 and #14-9079) on descriptive bookmark requirements for navigating Multi-file pdf documents – minimum standards for electronic documents.

(NOTE: #13-9165 online at:

www.txcourts.gov/media/273991/order-13-9165.pdf
(search for “bookmark” to find all “bookmark” rules,
search for “descript” to find “pdf descriptive bookmarks” rule).

(NOTE: #14-9079 online at:

www.efiletexas.gov/documents/Technology_Standards_032114.pdf)

2) JCIT Duties per Texas Code Sec. 77.031 – minimum standards for electronic documents (with JCIT Technology Standards v1.3)

3) Texas Rules of Civil Procedure (TRCP) 21 (f)(8)

TRCP Rule 21(f) (8) Format

An electronically filed document must:

(A) be in text-searchable portable document format (PDF);

(B) be directly converted to PDF rather than scanned, if possible; (i.e. No TIFF conversion, scan=TIFF)

(C) not be locked; and

(D) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.

4) Texas Code 21.002, Motion for Contempt

5) TRAP 38.6. Time to File Briefs – 30 days AFTER Clerk’s Record received which meets minimum standards for electronic court documents.

6) TRAP rule 34.4 (d) *Defects or Inaccuracies* in Clerk’s Record

Health issues

Last but not least, is Appellant’s precarious health condition and it’s needs. On 9/14/2015, Appellant’s home central AC went out completely, exacerbating the health problems and requiring immediate replacement, which takes research, time, financial ingenuity (\$5100 bill) and energy, of which with the Appellant’s Bradycardia diagnosis, is limited.

As described in the attached letter from the Appellant's doctor, Appellant needs typing and electronic document assistance, and his wife has dropped everything this week to assist her husband in the filing of these documents with the court. Appellant's wife has had to double down on her own Sumatriptan subscription for migraines in order to accomplish this as well.

It is amazing that it has taken the time of elderly man with a below-par heart-rate and his migraine-inflicted wife, to have to tell the court and the clerk about what should be common sense about the readability of documents, and the Texas Supreme Court Order that demands it. It has been a great health, financial and personal strain to do so, but an appeal is moot without a usable Clerk's Record.

The list of Appellant's continuing medical appointments on following dates, has been a time-consuming priority: (7/24/2015-bloodtests,9/8/2015-medication prescribed,10/1/2015-medication adjustment/renewal, 10/9/2015-hand clinic apt)

The State Bar of Texas Pro Bono Committee does not have the resources to help with anything (see attached letter-Exhibit E). Appellant, as described by his doctor's letter to the Court, is an elderly man is doing as much as he can as quickly as he can, with his wife's typing/computer help, to expose the lies and perjury of the opposing party in obtaining a Summary Judgment. Appellant should not be denied justice due to Appellees Motion shenanigans.

It prejudices the Appellant to have to attempt to expose perjury with unusable documents which do not meet the minimum standards for electronic documents set forth by the Texas Supreme Court.

The lies cannot be exposed if the documents cannot be read and navigated, which is why the Texas Supreme Court set minimum standards of readability with descriptive bookmarks explicitly required to assist in finding the documents in a multi-file pdf.

Companion Case time requirements

On 8/28/2015, Appellant also had to file a Motion to Retain the companion case which retains the earlier filed Statute of Limitations of 9/9/2008, a date which Defendant agreed in his Summary Judgment would preclude any Statute of Limitations arguments. A DWOP, (Dismissal for Want of Prosecution), is neglecting the fact that the cases are one and the same, and working on one, delays the other, but is work on the same case. We originally asked our attorney to join Defendant Davila to Defendant Sylvia Hamilton's case, and he instead bizarrely started a second lawsuit, this one, instead, leading to these contradicting DWOP situations, where work on one is considered neglect of the other case. We will join these cases after this appeal is finished, to cure these problems.

Basis of Brief

The perjury in the Defendant Davila's Motion for Summary Judgment is self-contradicting evidence presented by the Defendant himself. The time we have had to work on the brief, i.e. not spent on trying to get the Clerk's Record fixed, shows the following case quote from Federal Court. Further research while completing the brief, with the fixed Clerk's Record page number references, will show the perjury page numbers and the Texas legal precedents against perjury. The Defendant's perjury is self-evidenced in his Motion, nothing needs to be added.

As of yet, we have only found the Federal precedent for the basis of our case, as we have had to spend the time on trying to get a usable Clerk's Record (descriptive bookmarks missing, to assist in finding documents, cannot navigate, and TIFFs used, in violation of Texas Supreme Court Order/minimum standards for electronic documents). But Texas no doubt has an analogous precedent as the concept of Victory through Shenanigans is repugnant to the Justice System and makes a mockery of it. The following quotes can be found at the following link, discussing the Federal Court "No Contradictions" requirements, which surely are mirrored in Texas Court precedents, and we shall find them for the brief.

<http://www.quarles.com/publications/seventh-circuit-contradictory-evidence-cannot-be-%E2%80%9Cadmitted%E2%80%9D-as-a-%E2%80%9Cgotcha%E2%80%9D-on-summary-judgment/>

Seventh Circuit: Contradictory Evidence Cannot Be "Admitted" as a "Gotcha" on Summary Judgment

"Recently, the Court of Appeals for the Seventh Circuit in *Perez v. Thorntons, Inc.*, 731 F.3d 699 (7th Cir. 2013), appears to have added an exception: By failing to respond, parties do not necessarily "admit" facts that are contradicted by other evidence in the record.

The problem, as the court described it, was that the employer's Rule 56.1 statement contained other facts that essentially contradicted the fact that it sought to have deemed admitted. *Id.* at 706. Thus, the court continued, if the moving party has "undermined" its own Rule 56.1 statement with contradictory evidence, the non-movant's failure to comply with 56.1 is not decisive. To do otherwise, the court noted, would be to "reward" parties who "successfully obfuscate the record and engage in 'gotcha' litigation tactics." *Id.* Accordingly, the majority remanded the case,..."

Summary

A disabled man should not have to use disabled electronic documents, by Order of the Texas Supreme Court. The Clerk's Record is currently in violation of Texas Supreme Court Orders for minimum standards for electronic documents. Appellant has been injured by the


Travis County Clerk's failure to timely file a Clerk's Record Compliant with the Texas Supreme Court Order on minimum electronic document standards.

It is requested that the Appeals Clerk reject the defective Travis County Clerk's Record per the above cited authorities, and demand compliance with the Texas Supreme Court Orders cited above. It is material, as being able to read and navigate documents without extreme mental frustration and wasted time, with the limited energy restrictions of the Appellant's health, to begin with, is prejudicial and material to an appeal, as is being compliant with a Texas Supreme Court Order.

As a last resort, Appellant will file his "*Motion for Contempt of Court Against Travis County District Clerk for Violation of Texas Supreme Court Order per Minimum Electronic Document Standards*", (herein referred to as "*Motion2*"), next week.

Per TRAP 38.6. Time to File Briefs – Brief is due 30 days AFTER Clerk's Record received which meets minimum standards for electronic court documents. We anxiously await it's arrival.

Sincerely,


Alan L. Hamilton, Appellant, Pro Se

cc:

Appellee's Attorney:
Hon. Karen L. Landinger
Cokinos, Bosien and Young
10999 W Ih 10 Ste 800
San Antonio, TX 78230-1349

VIA ELECTRONIC FILING
(www.greenfiling.com)

cc:

Velva L. Price
Travis County District Clerk
1000 Guadalupe Street
Austin, Texas 78701

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Exhibits

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Exhibit E - 5-Pro Bono rejection letter

Exhibit A



Victory Medical

7/24/2015

RE: HAMILTON, ALAN DOB: 7/7/1946

To Whom It May Concern:

Alan Hamilton is under my care and has medical issues I am currently trying to stabilize. These conditions including undiagnosed chest pain, bradycardia, carpal tunnel syndrome, and worsening fatigue for unknown reasons.

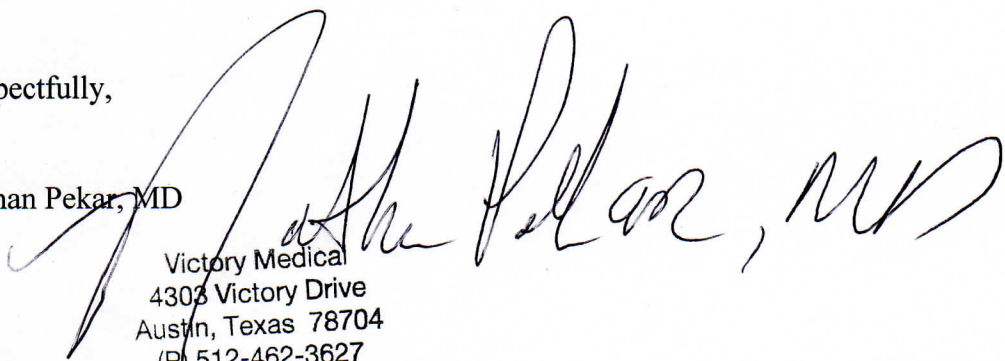
Do to his age and these medical conditions it would be difficult to keep to tight deadlines and he may need extra time to perform tasks due to his medical conditions which limit his energy levels and ability to perform activities (ie: hard to type/write with carpal tunnel syndrome).

As a medical professional, I request the court take these medical conditions when assigning dead-lines and tasks for my patient.

Any consideration shown to this patient is appreciated. Please feel free to contact me if you have any questions.

Respectfully,

Nathan Pekar, MD


Victory Medical
4303 Victory Drive
Austin, Texas 78704
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4303 Victory Drive
Austin, TX 78704

Phone: (512) 462-3627
FAX: (512) 462-2898
www.victorymed.com

3003 Bee Caves Road
Austin, TX 78746

ID:
DOB: 7/7/1946 (69 yr)
Gender: Male

Name: Hamilton, Alan
Comments:

7/24/2015 9:15:00 PM

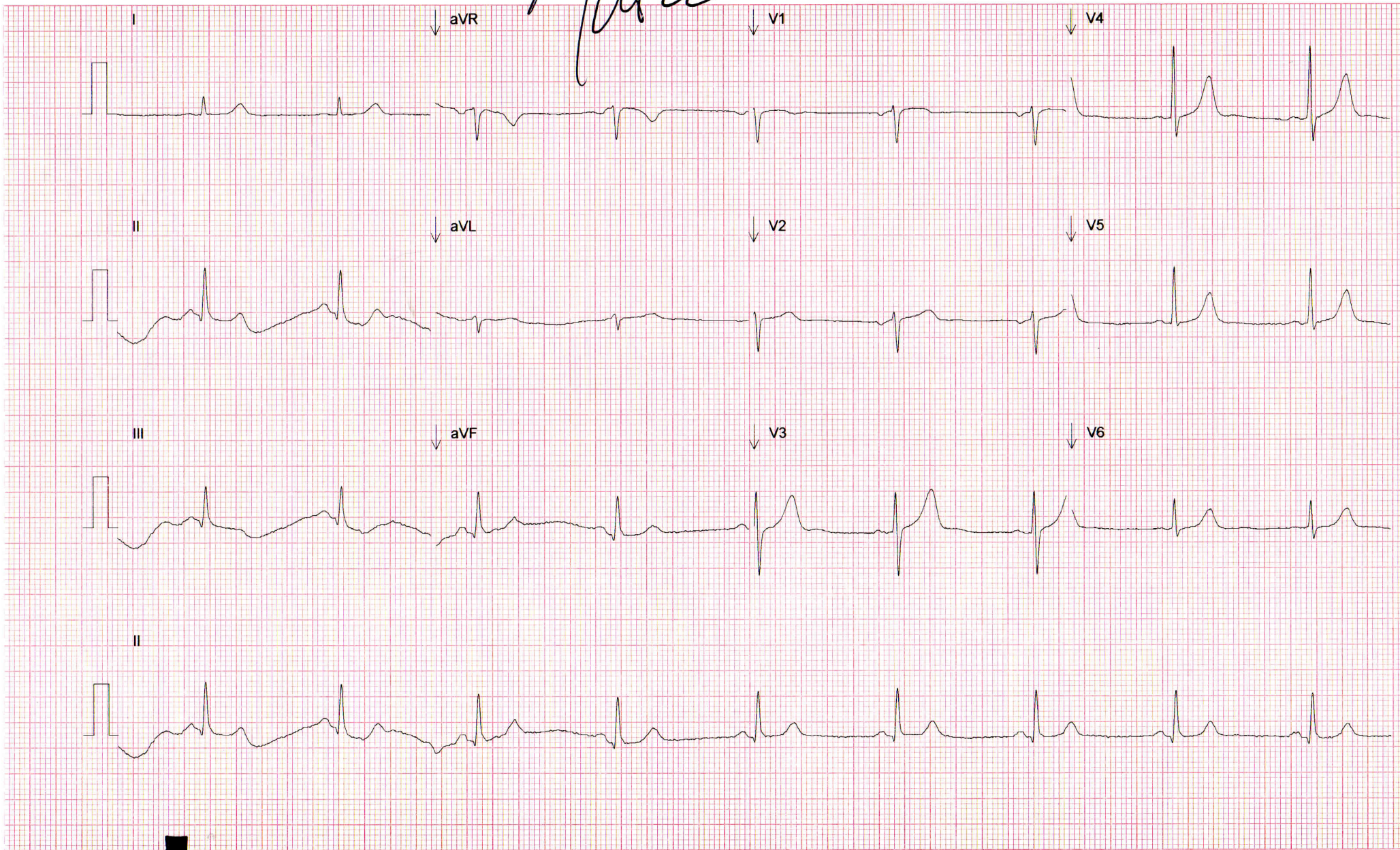
sinus rhythm (slow)
Normal ECG

P/PR: 114/144 ms
QRS: 96 ms
QT/QTc: 428/413 ms
P/QRS/T Axis: 76/70/40 deg
Heart Rate: 56 BPM

Unconfirmed Report

BRADY CARDIA

[Signature]



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Ira G. Lown MD, FACS

Austin Hand Surgery: Austin Hand Group | phone: 512.327.4263 | fax: 512.327.4265 | 3345 Bee Cave Rd Suite 101 Austin, TX 78746 | austinhandgroup@austinhandgroup.com

Carpal Tunnel Syndrome

What is carpal tunnel syndrome?

Carpal tunnel syndrome is a common, painful disorder of the wrist and hand.

How does it occur?

Carpal tunnel syndrome is caused by pressure on the median nerve in your wrist. People who use their hands and wrists repeatedly in the same way (for example, illustrators, carpenters, and assembly-line workers) tend to develop carpal tunnel syndrome.

Pressure on the nerve may also be caused by a fracture or other injury, which may cause inflammation and swelling. In addition, pressure may be caused by inflammation and swelling associated with arthritis, diabetes, and hypothyroidism. Carpal tunnel syndrome can also occur during pregnancy.

What are the symptoms?

The symptoms include:

- pain, numbness, or tingling in your hand and wrist, especially in the thumb and index and middle fingers; pain may radiate up into the forearm
- increased pain with increased use of your hand, such as when you are driving or reading the newspaper

- increased pain at night
- weak grip and tendency to drop objects held in the hand
- sensitivity to cold
- muscle deterioration especially in the thumb (in later stages).

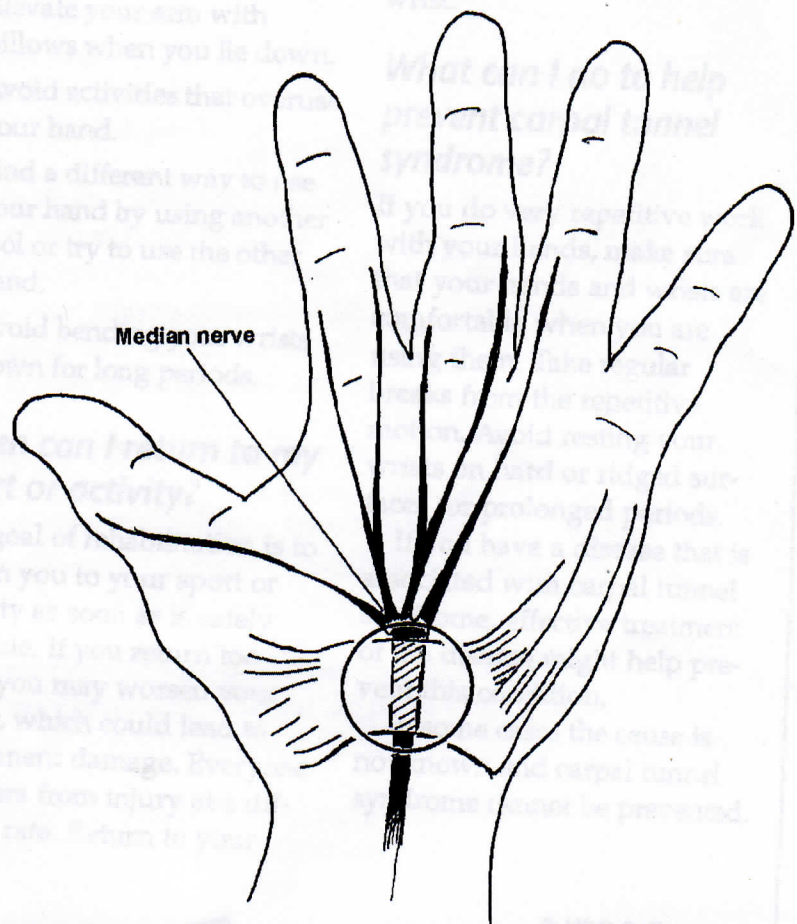
How is it diagnosed?

Your doctor will review your symptoms, examine you, and discuss the ways you use your

hands. He or she may also do the following tests:

- The doctor may tap the inside middle of your wrist over the median nerve. You may feel pain or a sensation like an electric shock.
- You may be asked to bend your wrist down for one minute to see if this causes symptoms.
- The doctor may arrange to test the response of your

Carpal Tunnel Syndrome



Carpal Tunnel Syndrome

nerves and muscles to electrical stimulation.

How is it treated?

If you have a disease that is causing carpal tunnel syndrome (such as rheumatoid arthritis), treatment of the disease may relieve your symptoms. Other treatment focuses on relieving irritation and pressure on the nerve in your wrist. To relieve pressure your doctor may suggest:

- restricting use of your hand or changing the way you use it
- wearing a wrist splint during sleep and physical activity involving the wrist
- exercises.

Your doctor may prescribe a cortisone-like medicine or a nonsteroidal anti-inflammatory medicine, such as ibuprofen. Your doctor may recommend an injection of a cortisone-like medicine into the carpal tunnel area. In some cases surgery may be necessary.

How long will the effects last?

How long the symptoms of carpal tunnel syndrome last depends on the cause and your response to treatment. Sometimes the symptoms disappear without any treatment, or they may be relieved by

nonsurgical treatment. Surgery may be necessary to relieve the symptoms if they do not respond to treatment or they get worse. Surgery usually relieves the symptoms, especially if there is no permanent damage to the nerve.

Symptoms of carpal tunnel syndrome that occur during pregnancy usually disappear following delivery.

How can I take care of myself?

Follow your doctor's recommendations. Also try the following:

- Elevate your arm with pillows when you lie down.
- Avoid activities that overuse your hand.
- Find a different way to use your hand by using another tool or try to use the other hand.
- Avoid bending your wrists down for long periods.

When can I return to my sport or activity?

The goal of rehabilitation is to return you to your sport or activity as soon as is safely possible. If you return too soon you may worsen your injury, which could lead to permanent damage. Everyone recovers from injury at a different rate. Return to your

sport will be determined by how soon your wrist recovers, not by how many days or weeks it has been since your injury occurred. In general, the longer you have symptoms before you start treatment, the longer it will take to get better.

You may return to your sport or activity when you are able to painlessly grip objects like a tennis racquet, bat, golf club, or bicycle handlebars. In sports such as gymnastics, it is important that you can bear weight on your wrist without pain. You must have full range of motion and strength of your wrist.

What can I do to help prevent carpal tunnel syndrome?

If you do very repetitive work with your hands, make sure that your hands and wrists are comfortable when you are using them. Take regular breaks from the repetitive motion. Avoid resting your wrists on hard or ridged surfaces for prolonged periods.

If you have a disease that is associated with carpal tunnel syndrome, effective treatment of the disease might help prevent this condition.

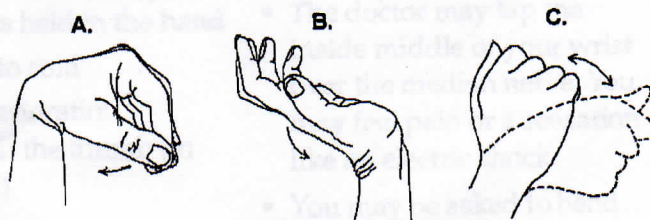
In some cases the cause is not known and carpal tunnel syndrome cannot be prevented.

Carpal Tunnel Rehabilitation Exercises

You may do all of these exercises right away.

1. Active range of motion

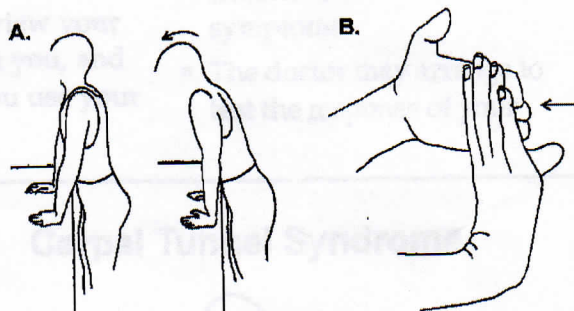
- Flexion:** Gently bend your wrist forward. Hold for 5 seconds. Repeat 10 times. Do 3 sets.
- Extension:** Gently bend your wrist backward. Hold this position 5 seconds. Repeat 10 times. Do 3 sets.
- Side to side:** Gently move your wrist from side to side (a handshake motion). Hold for 5 seconds at each end. Repeat 10 times. Do 3 sets.



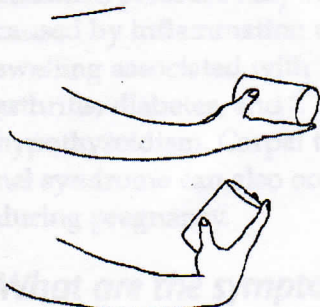
Active range of motion

2. Stretching

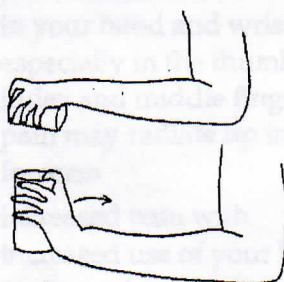
- Place both palms on a desk or table. Gently lean your body forward over your wrists and hold for 15–30 seconds. Repeat 3 times.
- With your uninjured hand, help to bend the injured wrist down by pressing the back of your hand and holding it down for 15 to 30 seconds. Next, stretch the hand back by pressing the fingers in a backward direction and holding it for 15 to 30 seconds. Do this twice.



Stretching



Wrist flexion



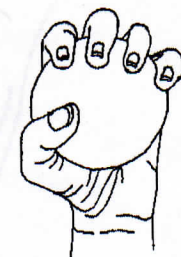
Wrist extension

- Tendon glides:** Start with the fingers of your injured hand held out straight. Gently bend the middle joint of your fingers down toward your upper palm. Hold for 5 seconds. Repeat 10 times. Do 3 sets.



Tendon glides

- Wrist flexion:** Hold a can or hammer handle with your palm up. Bend your wrist upward. Hold this position for 5 seconds. Repeat 10 times. Do 3 sets. Gradually increase the weight of the object you are holding.
- Wrist extension:** Holding a can or similar object with the palm down, bend the wrist up. Hold this position for 5 seconds. Repeat 10 times. Do 3 sets.
- Grip strengthening:** Squeeze a rubber ball and hold for 5 seconds. Repeat 10 times.



Grip strengthening

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Exhibit B

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Bradycardia | Slow Heart Rate

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Bradycardia = too slow

A [heart rate](#) of less than 60 beats per minute (BPM) in adults is called bradycardia. What's too slow for you may depend on your age and physical condition.

- Physically active adults often have a resting heart rate slower than 60 BPM but it doesn't cause problems.
- Your heart rate may fall below 60 BPM during deep sleep.
- Elderly people are more prone to problems with a slow heart rate.

[View an animation of bradycardia.](#)

Causes of bradycardia

- Problems with the sinoatrial (SA) node, sometimes called the heart's natural pacemaker
- Problems in the conduction pathways of the heart (electrical impulses are not conducted from the atria to the ventricles)
- Metabolic problems such as hypothyroidism
- Damage to the heart from heart attack or heart disease

Symptoms of bradycardia

A heart rhythm that's too slow can cause insufficient blood flow to the brain with symptoms such as:

- Fatigue
- Dizziness
- Lightheadedness
- Fainting or near-fainting spells
- In extreme cases, cardiac arrest may occur.

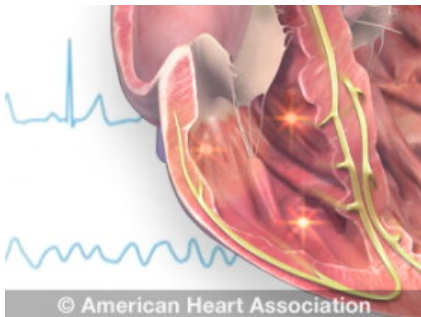
Complications of bradycardia

Severe, prolonged untreated bradycardia can cause:

- Heart failure
- [Syncope](#) (loss of consciousness; fainting)
- Angina pectoris (chest pain)
- High blood pressure

Treatment of the underlying medical cause

- Not usually needed except with prolonged or repeated symptoms
- Can usually be corrected with an [artificial pacemaker](#) to speed up the heart rhythm as needed
- Medication may be adjusted.



Arrhythmia

• Home

• About Arrhythmia

Introduction
Atrial Fibrillation
Bradycardia
Conduction Disorders
Premature Contractions
Tachycardia
Ventricular Fibrillation
Other Rhythm Disorders
Types of Arrhythmia in Children

• Why Arrhythmia Matters

• Understand Your Risk for Arrhythmia

• Symptoms, Diagnosis & Monitoring of Arrhythmia

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• Arrhythmia Tools & Resources

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This content was last reviewed on 10/23/2014.

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[verify here.](#)

Exhibit C

① CLERKS RECORD PDF WITH NON-DESCRIPTIVE TOC BUG ON LEFT
and ② DOCKET PAGE WITH DOCUMENT TITLES STORED IN
"ADDITIONAL INFO" FIELD ON RIGHT

1pg1

13-15-00307-CVClkRecV001.pdf - Adobe Acrobat Reader DC

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1150

FILED DATE	CATEGORY	DESCRIPTION	ADDITIONAL INFO
3/25/2015	OTHER	!OTH:OTHER FILING	MEMORANDUM OF OPPOSITION TO SUMMARY JUDGMENT FOR DEFENDANT CONTRADICTING EVIDENCE EXHIBITS - TABLE OF CONTENTS
3/25/2015	OTHER	!OTH:OTHER FILING	PLAINTIFF'S MEMORANDUM OF OPPOSITION TO: DEFENDANT DANIEL DAVILA III'S MOTION FOR TRADITIONAL AND NO EVIDENCE SUMMARY JUDGMENT...(EXHIBIT BB)

6:32 PM 7/30/2015

① CLERKS RECORD PDF WITH NON-DESCRIPTIVE TOC BUG ON LEFT
 and ② DOCKET page with DOCUMENT TITLES STORED IN
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- OTHER FILING
- OTHER FILING
- !ORD:OTHER ORDER
- NTC:NOTICE OF APPEAL

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3/25/2015	OTHER	!OTH:OTHER FILING	PLAINTIFF'S MEMORANDUM OF OPPOSITION TO: DEFENDANT DANIEL DAVILA III'S MOTION FOR TRADITIONAL AND NO EVIDENCE SUMMARY JUDGMENT...(EXHIBIT BB)
3/25/2015	OTHER	!OTH:OTHER FILING	PLAINTIFF'S MEMORANDUM OF OPPOSITION TO: DEFENDANT DANIEL DAVILA III'S MOTION FOR TRADITIONAL AND NO EVIDENCE SUMMARY JUDGMENT...(EXHIBITS CC - II)
4/7/2015	MOTION	MTN:OTHER MOTION	PLAINTIFFS MOTION TO VACATE DEFENDANTS SUMMARY JUDGMENT ORDER OBTAINED WITH A FRAUDULENT AND PREJURING MOTION
5/8/2015	NOTICE	NTC:OTHER NOTICE	NOTICE OF HEARING
5/22/2015	ANS-RESP	OTHER ANSWER/RESPONSE	DEFENDANT DANIEL DAVILA, III'S RESPONSE AND OBJECTIONS TO "PLAINTIFF'S MOTION TO VACATE DEFENDANT'S SUMMARY JUDGMENT ORDER OBTAINED WITH A FRAUDULENT AND PERJURING MOTION"
5/28/2015	OTHER	OTHER FILING	LETTER-ALAN L HAMILTON (WITH ORDER FORWARDED TO CLERK OF THE 353RD

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Bookmarks

MAILED

- JUDGMENT NOTICE MAILED
- OTHER ANSWER/RESPONSE
- !OTH:OTHER FILING
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- !OTH:OTHER FILING
- MTN:OTHER MOTION
- NTC:OTHER NOTICE
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- OTHER FILING
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- OTHER FILING
- !ORD:OTHER ORDER
- NTC:NOTICE OF APPEAL

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FILED DATE	DOCUMENT DESCRIPTION	DOCUMENT CATEGORY	PAGE
3/16/2015	OBJECTIONS	OBJECTIONS	653-708
3/17/2015	JUDGMENT NOTICE MAILED	JUDGMENT NOTICE MAILED	709-709
3/17/2015	JUDGMENT NOTICE MAILED	JUDGMENT NOTICE MAILED	710-710
3/25/2015	OTHER ANSWER/RESPONSE	OTHER ANSWER/RESPONSE	711-727
3/25/2015	!OTH:OTHER FILING	!OTH:OTHER FILING	728-783
3/25/2015	!OTH:OTHER FILING	!OTH:OTHER FILING	784-803
3/25/2015	!OTH:OTHER FILING	!OTH:OTHER FILING	804-842
3/25/2015	!OTH:OTHER FILING	!OTH:OTHER FILING	843-983
4/7/2015	MTN:OTHER MOTION	MTN:OTHER MOTION	984-1004
5/8/2015	NTC:OTHER NOTICE	NTC:OTHER NOTICE	1005-1007
5/22/2015	OTHER ANSWER/RESPONSE	OTHER ANSWER/RESPONSE	1008-1115
5/28/2015	OTHER FILING	OTHER FILING	1116-1120
5/29/2015	OTHER FILING	OTHER FILING	1121-1124
5/29/2015	OTHER FILING	OTHER FILING	1125-1130
6/3/2015	!ORD:OTHER ORDER	!ORD:OTHER ORDER	1131-1132
6/5/2015	NTC:NOTICE OF APPEAL	NTC:NOTICE OF APPEAL	1133-1134
6/5/2015	OTHER FILING	OTHER FILING	1135-1136
6/9/2015	OTHER FILING	OTHER FILING	1137-1137
7/2/2015	DESIGNATION CLERKS RECORD	DESIGNATION CLERKS RECORD	1138-1145
7/7/2015	OTHER FILING	OTHER FILING	1146-1147
	Court Docket Record	Docket Record	1148-1152
	Court Cost Record	Bill of Cost	1153-1153

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Exhibit D

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Exhibit E



STATE BAR OF TEXAS

APPELLATE SECTION Pro Bono Committee

August 13, 2015

Mr. Alan L. Hamilton
9902 Childress Dr.
Austin, Texas 78753-4332

Re: Cause No. 03-15-00357-CV; *Alan L. Hamilton v. Daniel Davila III*; In the
Court of Appeals for the Third Judicial District of Texas at Austin

Dear Mr. Hamilton:

We have received the docketing statement from the Third Court of Appeals in which you request pro bono appellate representation. We regret that our lack of resources prevent us from assisting you in this matter. We wish you the best of luck.

Very best regards,

THE PRO BONO COMMITTEE