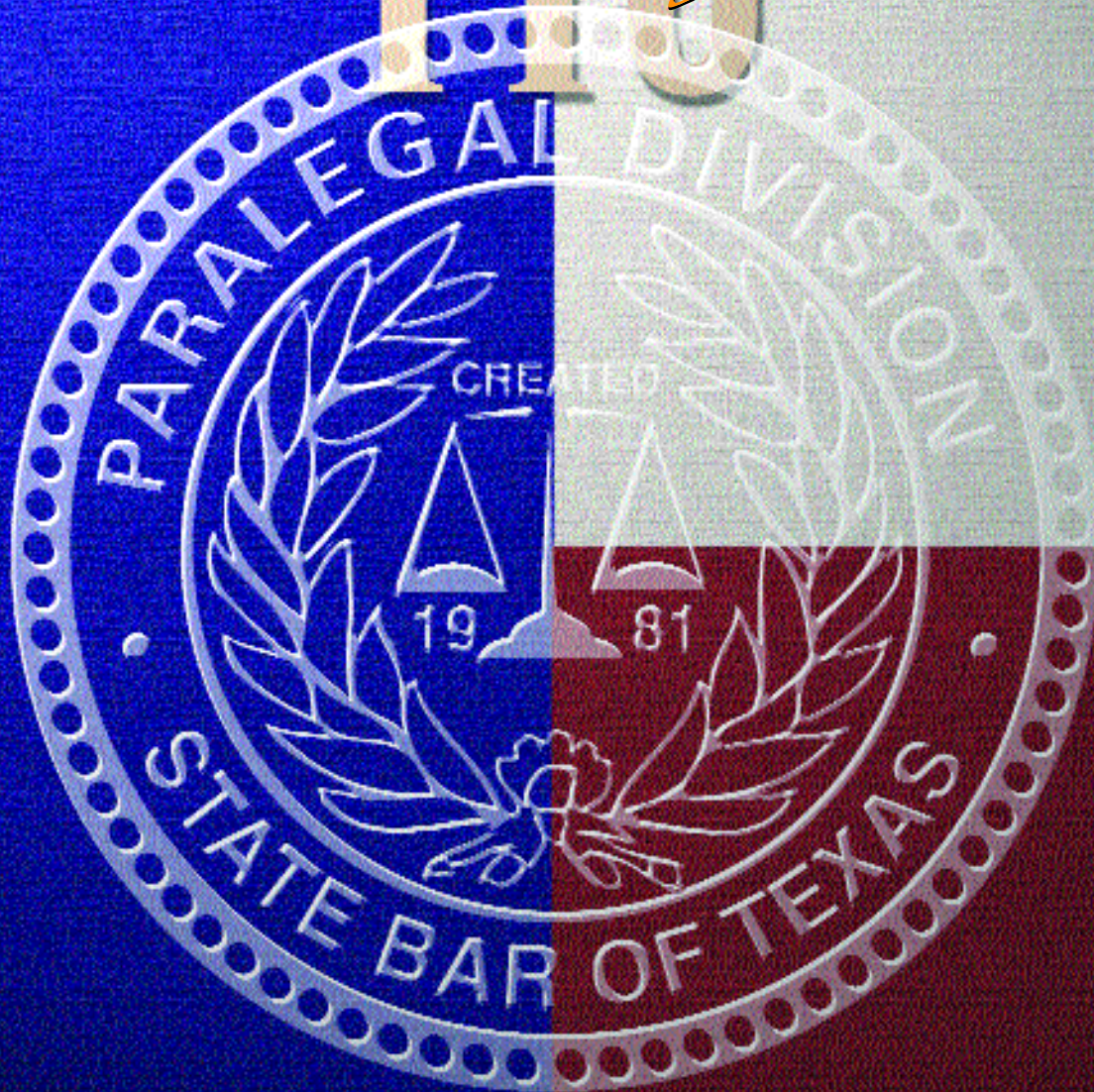


Texas Paralegal Journal



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PRESIDENT'S *Message*

Kim J. Cantu, CLA

This is my final message as the 2004-2005 President, Paralegal Division, State Bar of Texas (PD). It has been a great year, and I am closing with the final comparison of Division benefits to Dorothy and her travels down the "Yellow Brick Road." As you will recall during the 2004-2005 year, I have compared the "scarecrow's need for a brain" to the Texas paralegal's need for CLE; I have compared the "lion's need for courage" to PD's courage and commitment to helping its members and the Texas paralegal. This article brings us to the "tin man's need for a heart" as compared to the Division's care, concern and dedication to its members.

The heart of the Division is exhibited through its success during the 2004-2005 year. Here is a list of what the Division

has accomplished for its members during the year:

- Online CLE initiated in January 2005
- SBOT approved "paralegal" definition change April 2005; pending membership approval
- SBOT approved "paralegal" definition change April 2005; membership approved May 2005
- Unveiling of new website at txpd.org
- SBOT approved LAD's membership listing for publication in Texas Legal Directory
- TBLS approved listing of Board Certified Legal Assistants for publication in Texas Legal Directory
- Initiation of LAD Ambassador

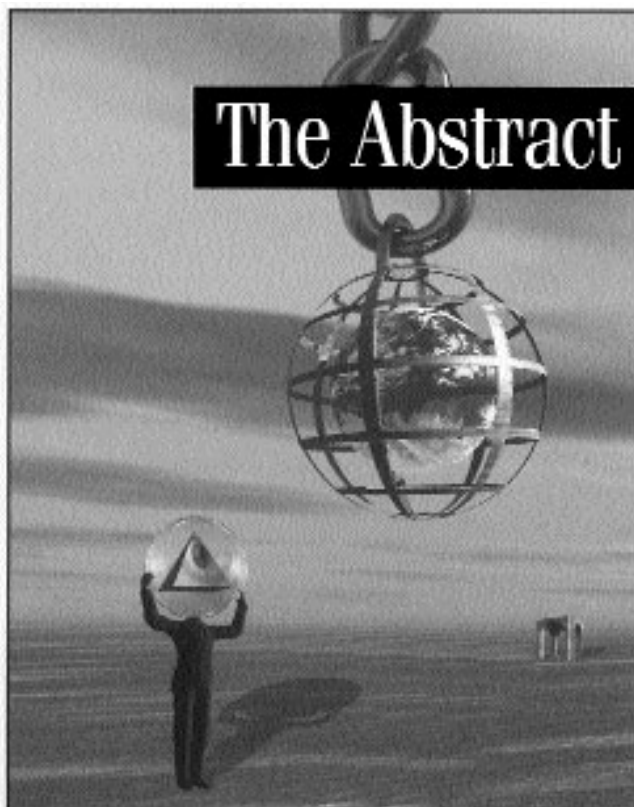


Program — a plan to keep our past presidents active and involved

- LAD went to London April 24-30, 2005; met with Court Justices; attended trial in Royal Inns of Court; dined with barristers in Great Hall of Middle Temple; met with Lexis Nexis Butterworths' representatives; attended solicitor-presented CLE on the comparison of the practice of law in the UK vs. US; saw the Queen of England
- Texas House passed House Resolution No. 865 declaring October 23 Paralegal Day

(Continued on page 3)

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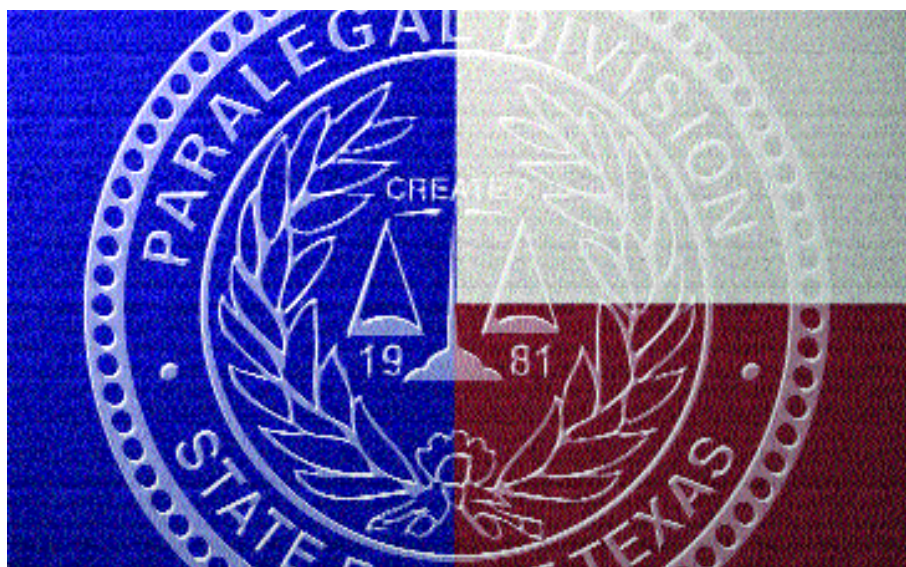
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Paralegal Division Hosts 2005 TAPA

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Important News

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- State Bar College amended its bylaws to permit PD representative to hold 3-year Board position
- PD's President-Elect, Ellen Lockwood, CLAS, RP, appointed to serve a 1-year term on Texas Access to Justice Task Force
- PD Directors planned and hosted 30 statewide events of participatory CLE
- PD Newsletter now posted on PD website
- PD serving as statewide depository of CLE events offered in PD's 16 districts and approximately 32 local Texas paralegal organizations

The Division leaders have been working very hard for the members during the 2004-2005 year. The "heart" is the life organ of the body, just as the officers and directors are the "heart" of the Paralegal Division. PD's leadership has

enriched the lifeblood of all the members through their incredible work during the 2004-2005 year which has enabled our organization to sore with success. I would like to thank the Division's officers and directors for all their hard work and dedication during

my term in office, and for showing care and concern for the professional needs of Division members.

It has been an honor to serve as the Division's 2004-2005 President. Thank you.

2005 Bylaws and Election Results

Bylaw Amendment #1 passes - relates to revision of Director term

Bylaw Amendment #2 passes - relates to named change of LAD to Paralegal Division, State Bar of Texas

Bylaw Amendment #3 passes - relates to a change in definition of "Ballot Date" to "Ballot Notification Date"

Congratulations to following Directors

who were elected in the odd-numbered districts:

District 1:	Debbie Skolaski, CP
District 3:	Debbie House, CLA
District 5:	Patricia J. Giuliano
District 7:	Page L. McCoy, PLS, CLA
District 11:	Cecile Wiginton, CLA
District 13:	Deborah Hathaway
District 15:	Virginia Gil, Board
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EDITOR'S *Clate*

by Rhonda J. Brashears

This issue is an exciting one; it announces yet another mile stone for the Division, a name change. I believe that this is a step in the right direction in continuing to keep our profession in the most professional light possible and, as always, the Paralegal Division is at the front of this endeavor.

In addition to the name change and change in terminology we have other important changes in the way of the Paralegal Division website and e-group. You can now find the Paralegal Division on the web at www.txpd.org. You will need to visit the new website to renew your rights to the e-group. Just log into the members only section, and follow the directions given there for signing up for the e-group. We have a new Webmaster and have several new ideas for making our website more powerful to better serve the Paralegal Division members.

This issue of our magazine is chalked full of helpful articles from wonderful authors. We have an article to assist with calculating economic damages, one which gives some insight on implementing a software training system and an article which breaks down the numbers between traditional court filings and e-filing. I hope you enjoy these and all the other great articles in this issue.

Finally, I would like to thank the Publications Committee members (listed to the right) for their hard work this year. The magazine would not be possible without you. I look forward to working with some of these people and some very excited new Publications Committee members in the next year. Have a blessed summer.

Rhonda J. Brashears
Editor

HOW TO REACH US

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**DEADLINE FOR SUBMISSION OF ARTICLES FOR
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Time Is Money

eFiling Saves Both

Tammy Carter & Lacey Mullooney

“A lawyer’s time is his stock and trade.” Abraham Lincoln

If you have ever used a computer to type a document, sent or received a fax, or logged on to the internet to do online research with Westlaw or Lexis, then you understand that technology improves efficiency. Law firms use technology as time-saving devices to increase the bottom line by reducing costs and increasing efficiency.

The latest advancement in technology that will increase your productivity is TexasOnline’s eFiling service. eFiling is the electronic transfer of court documents over the internet to the Clerk’s Office. Since the first eFiling through CaseFileXpress to Fort Bend County May 1, 2003, TexasOnline has successfully completed an eleven-month pilot project overseen by the Texas Supreme Court, the Judicial Committee on Information Technology (JCIT) and the Office of Court Administration (OCA). The pilot phase was so successful that several other counties were added to the





Table 1: Traditional Filing Activities by Resource (Large/Medium Firm)

Activity	Resource	Minutes
Document is approved	Attorney	0
Original document is printed	Legal assistant	5
Document signed by attorney (assuming attorney is available to sign)	Attorney	5
Copies are made, collated, stapled	Legal assistant	10
Cover letter is written and enclosed in envelope with documents	Legal assistant	10
Call to the Clerk to confirm the filing fee	Legal assistant	20
Call to accounting to request check issued for filing fees	Legal assistant	5
Accounting authorizes, prints check, and enters information into billing system	Accounting	15
Call in-house runner for pick-up	Legal assistant	5
Call process server to serve papers	Legal assistant	5
Runner goes to the courthouse	In-house runner	45
Wait for file stamp from runner	Legal assistant	45
File document in office file	Legal assistant	5
Total		175 minutes

Table 2: Traditional Filing Activities by Resource (Small Firm/Solo Practitioner)

Activity	Resource	Minutes
Document is approved	Attorney	0
Original document is printed	Legal assistant	5
Document signed by attorney * (assuming attorney is in the office to sign document)	Attorney	5
Copies are made, collated, and stapled	Legal assistant	10
Cover letter is written and printed	Legal assistant	10
Call to the Clerk to confirm the filing fee	Legal assistant	20
Check is written for filing fees	Attorney	5
Call courier for pick-up	Legal assistant	5
Wait for courier to pick-up document	Legal assistant	15
Wait for file stamp from courier	Legal assistant	45
Call process server to serve papers	Legal assistant	5
File document in office file	Legal assistant	5
Total		130 minutes

TexasOnline System and thirty more are taking the necessary steps to join. The goal of the Texas Supreme Court, the JCIT and OCA is to roll out eFiling via the TexasOnline system in all 254 counties within the next three to five years.

Save \$70 per filing

Is eFiling a glorified fax machine or can it really save a law firm time and money? The answer is that it really can save time and money. For nine months, CaseFileXpress surveyed Texas Paralegal Journal (TPJ) readers about the time needed to file and the costs associated with filing documents at the courthouse; coupled with that, CaseFileXpress questioned personnel in law firms of various sizes about filing procedures, costs, and the use of eFiling and traditional filing methods. The results of the study show that the average firm can realize savings of at least \$70.00 per filing.

The following tables show step by step procedures typically followed in firms when filing documents with the Clerk. In both tables all legal personnel (other than the attorney and runner) are called legal assistants. For the purpose of this article, the term legal assistant includes paralegals, legal secretaries, legal administrators, and legal assistants.

Cost of Traditional Filing Adds Up

The time involved in filing documents traditionally quickly adds up. (*Table 1: Traditional Filing Activities by Resource — Large/Medium Firm*) The average large or medium sized firm spends 175 minutes in tasks directly related to filing documents with the clerk.

In a small firm, (*Table 2: Traditional Filing Activities by Resource — Small Firm*) personnel are utilized for more than one task and are responsible for a wide range of activities. The attorney in a small firm may be responsible for reconciling accounting, preparing documents for filing, and taking the documents over to the
(Continued on page 10)

SUSTAINING MEMBER PROFILE

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Tammy Carter, CEO.

Enthusiasm. Determination. Focus.

Whether competing on the golf course as a pro or running Texas' premier eFiling service provider, Tammy Carter's enthusiasm for doing things the right way is evident in all aspects of her busy life. Tammy Carter, CEO of CaseFileXpress, founded the company in 2002 after consulting with the State of Texas to come up with a quicker more efficient way to file court documents. "The legal community benefits from eFiling," Carter said. "eFiling saves time and money, and it is as secure as traditional, slower methods of filing."

Carter wanted to make eFiling as simple as possible for her clients. Her biggest strength, honed from years of consulting with clients to improve their business practices, is being able to listen to customers

and develop a solution to fit their needs. "A lot of people in the IT industry think they know how to run their client's business better than the client does," she said, "and that's a big mistake."

Even though the eFiling process is easy and clients can handle most issues themselves, Carter insists on "real time" assistance from her staff; 24 hours a day, 7 days a week. "We know all too well about deadlines and that the hectic, legal world rarely takes a break," Carter said, "so we're always on the job."

Soon other states will follow the success of Texas and look to begin eFiling their court documents. Since Carter and CaseFileXpress are pioneers in the field, and focused on finding new and improved ways to service customers, it's a safe bet that CaseFileXpress will be there blazing the path. And for Carter, that's par for the course.



Carter approaches her charitable efforts with as much, if not more enthusiasm, as she does her work. Her primary contribution is to the American Cancer Society. Having lost close relatives to the disease and having friends struggle with cancer now, Carter has been moved to donate her expertise and

celebrity as a professional golfer by chairing several American Cancer Society golf benefits - raising over \$100,000.

Tammy Carter has extensive government experience and more than eight years of experience managing complex software development projects. Carter earned her Bachelor of Science in Management Information Systems from California State University in Sacramento. In addition to her business experience, from 1995 to 1997, she was a professional golfer on the Florida Gold Coast Tour and the Future's Tour.



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Table 3: eFiling Activities by Resource

Activity	Resource	Minutes
Document is approved	Attorney	3
Open web browser and log on to an approved EFSP*	Legal assistant	1
Enter information for new petition	Legal assistant	5
Fill in request for private process, copies	Legal assistant	1
Upload approved document	Legal assistant	1
Enter payment information (credit card)	Legal assistant	1
Review filing and inputting information	Legal assistant	1
Submit the document	Legal assistant	1
Call private process server for pickup	Legal assistant	5
Wait for file receipt	Legal assistant	1
Retrieve file stamped copy from the Internet	Legal assistant	1
File document in office file	Legal assistant	2
Total		23 minutes

*Electronic Filing Service Provider (EFSP)

clerk to be filed. Smaller firms save time over larger firms, spending an average of 130 minutes on a filing, but smaller firms, especially solo practitioners, are not generating income when the attorney is out of the office, at the courthouse, or in trial. No new clients are seen. The income opportunity lost for adding new clients is very high when the attorney leaves the office to file a document at the courthouse.

Since business does not stop just because someone is waiting, adjustments were made so that wait time is not lost time. Several periods during the filing process for both large and small firms were identified as wait time. For the calculations of costs savings, the wait times have been removed. The time needed on average by the legal assistant in a large firm is 65 minutes and a small firm 70 minutes. Removing the wait time (*Table 4*) decreases

Table 4: Cost Center by Firm

Cost Center	Large/Med Firm	Cost	Small Firm	Cost	EFiling	Cost
Resource						
Attorney	5 minutes	14.60	10 minutes	30.00	3 minutes	8.75
Legal assistant	65 minutes	81.25	70 minutes	87.50	20 minutes	25.00
Accounting	15 minutes	25.00	NA		NA	
In-house runner	45 minutes	11.25	NA		NA	
Total Personnel	130 minutes	\$132.10	80 minutes	\$117.50	23 minutes	\$33.75
Office Overhead¹						
Paper(10 pages)		.50		.50		5.00 ³
Copying		5.00		5.00		NA
Courier fees		NA		20.00		NA
Parking		5.00		NA		NA
Mileage ²		6.60		NA		NA
Total Overhead		\$17.10		\$25.50		\$5.00
Total Costs		\$149.20		\$143.00		\$38.75

¹ Office overhead costs are direct costs associated with the preparation, delivery, and/or filing of court documents

² 20 miles round trip travel from the law office to the courthouse

³ Since a citation is requested from the clerk, the firm will pay the Clerk a copy fee for printing the citation and placing it in the process server's box.



es traditional filing times to 130 minutes for large firms and to 80 minutes for small firms, the times used in calculating costs.

eFiling Saves Time and Money

In contrast, eFiling saves time and therefore money. (*Table 3: eFiling Activities by Resource*) The tasks run much more quickly and there is little wait time. The activities identified are directly related to preparing, delivering, and/or filing court case documents.

Clearly, these charts illustrate the time saved by eFiling is between 130 and 145 minutes, including the wait time or 60 and 85 minutes without the "wait time". This time-savings translates directly into actual cost savings. *Table 4: Cost Center by Firm*, represents the costs of the filing processes for large and small firms with eFiling.

Filing documents in paper form requires one original document and one copy for service and one file marked copy for the firm's file. A ten-page document is used for the purposes of this study, so 30 pages of paper were printed, collated, processed, and sent to the courthouse.

To determine the cost per resource, average salaries for the attorney, legal assistant and other personnel from salary surveys conducted by the State Bar of Texas were used. The time from the Tables 1, 2 and 3 above is multiplied by the rates of the resources associated with each activity. The average bill rates used were \$175.00 per hour for an attorney and \$75.00 per hour for the legal assistant. The cost for accounting staff is estimated at \$100.00 per hour and the runner at \$15.00 per hour. Office overhead costs were added where appropriate.

See how eFiling will work for you

From Table 4 you can see that by eFiling documents to the Clerk, a law firm saves time and money. The standard rates used in these tables for the attorneys and legal assistants is "Billable Rate" which may differ widely among firms of different

regions, size, and areas of practice. To determine the cost savings your firm will realize by switching to eFiling, substitute your bill rates for our rates to create your own table.

You will see that the time saved is significant and real. The technology is reliable, ready, willing and able to assist you in delivering your documents to the courthouse. Take your cost savings table to your managing partner today and show how your firm can save time and money and

improve productivity with minimal effort. You can register online quickly and easily on our website at www.casefilexpress.com.

About the Founders and Authors

Tammy Carter, President, was a consultant on the TexasOnline eFiling Project before founding CaseFileXpress, the first eFiling Service Provider for TexasOnline.

Lacey Mullowney, Vice President, is a practicing attorney licensed in 1994 and based in Travis and Williamson Counties.

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A Unified Approach to Calculating Economic Damages

Derk G. Rasmussen & Joseph L. Leauanae

his article proposes a unified approach for defining and quantifying economic damages suffered by operating entities. For purposes of this treatise, economic damages refer to any temporary and/or permanent impairment caused by one or more parties and sustained by an operating entity. The authors identified a need for this article after encountering numerous variations of economic damage calculations, in litigation settings, that were seemingly inconsistent with damage theory.

What is a Unified Approach?

The authors' unified approach to calculating economic damages entails the analysis and synthesis of three distinct but interrelated components:

1. Historical lost profits
2. Future lost profits
3. Causation

When determining economic damages, it is imperative that experts understand the ultimate purpose of their calculations. The components identified above must all be considered and unified into a final value for economic damages. The damage calculation will be deficient if these components are not analyzed or integrated correctly.

The ultimate consideration when calcu-

lating economic damages is that the components identified above are not mutually exclusive. In fact, there is an integral relationship in every case between causation, historical lost profits, and future lost profits. Unfortunately, it has been the authors' experience that experts in many cases fail to fully consider the relationship between these components.

An effective application of the unified approach to calculating economic damages will rely upon the amalgamation of forensic accounting, economics, finance, and business valuation techniques.

Why Should a Unified Approach be Used?

Apart from the fact that a uniform approach would eliminate many of the theoretical inconsistencies that are often apparent in these types of calculations, the application of a unified approach is also helpful because it specifically structures economic damages into components that are easier to substantiate and defend. As in most litigated situations, the clearer and better defined the calculations presented by the expert, the easier it will be for the expert to defend or at least explain the methodologies employed and the assumptions made.



If a unified approach is not used, opposing experts may be more successful in attacking economic damage calculations because of the greater likelihood that the methodologies employed will not be based on generally accepted damage theory.

A well-constructed case that appropriately applies a unified approach will inevitably focus arguments more towards specific disagreements between the parties regarding the underlying assumptions of the damage calculation and away from disagreements as to how the damage calculation was constructed.

Timelines in Economic Damage Calculations

In order to ensure consistency between the facts of each case and the damage calculations being performed, it is imperative that experts fully understand the important chronological points that are used in economic damage calculations: the event date and the trial date.

The event date refers to the historical date on which the injurious event is alleged to have occurred. For example, in a matter involving the breach of a contract, the event date refers to the date on which the damaging party breached the contract.

The trial date refers to the anticipated date of trial, which is often the same as the valuation date, the date generally designated at which to present value economic damages.

Components of Damage Models

Although circumstances differ between cases, a solid calculation of economic damages consistently depends upon an accurate assessment of the following metrics: actual performance, but-for performance, and the present value of past and future losses.

Actual Performance

Actual performance refers to the financial performance exhibited by the damaged party during the period from the event date through the trial date. When

assessing the actual financial performance of the damaged party, particular attention must be directed towards the following:

- 1) Reconstructing accounting records
 - a) What financial records are available to calculate actual financial performance?
 - b) How reliable is this information?
- 2) Identifying normal operating costs versus extraordinary expenses
 - a) What was the normal level of expenses during the period of actual performance?
 - b) How do these expenses compare to the expenses in periods prior to the event date?
 - c) What assurances did the expert have that the operating costs listed in the accounting records do not include personal, inflated, or extraordinary expenses?
- 3) Analyzing mitigation issues and their impact on actual performance
 - a) What might the damaged party have done to minimize the damage caused by the injurious event?
 - b) To what extent, if any, did the damaged party undertake these mitigating actions?
 - c) If the damaged party could have mitigated a portion of the economic damages, and if the damaged party, for whatever reason, did not undertake actions to mitigate damages, then it may be necessary to reduce the calculated losses.

But-For Performance

But-for performance refers to the financial performance that the damaged party would have exhibited had it not been for the injurious event. Depending on the applicable damage model, discussed later in this article, but-for performance should generally be characterized as pre-trial and post-trial. Pre-trial but-for performance refers to the financial performance that would have been achieved by the damaged

party, during the period from the event date through the trial date, but-for the injurious event. Post-trial but-for performance refers to the financial performance that would have been achieved subsequent to the trial date, either into perpetuity or for a fixed period of time, but-for the injurious event. When assessing the but-for financial performance of the damaged party, particular attention must be directed towards the following:

- 1) Determining market size
 - a) Within what type of market or industry did the damaged party operate?
 - b) How large is/was the industry in which the damaged party operated?
 - c) How reasonable is this assessment and how was it determined?
- 2) Assessing market penetration
 - a) How much of the total market could the damaged party have captured?
 - b) How reasonable is this determination?
- 3) Projecting lost sales
 - a) What level and quality of sales could the damaged party have achieved?
 - b) What information is available to make this determination?
 - c) Did or could the damaged party have had the infrastructure to achieve the level of projected sales?
 - d) Is there sufficient working capital or did the damaged party have access to sufficient working capital, to fund the level of projected sales?
- 4) Identifying fixed versus variable versus capital costs
 - a) What costs would have been incurred to achieve projected but-for sales?
 - b) How reasonable is/was the expectation that these costs could be incurred and covered?
- 5) Projecting operating cash flows
 - a) How much cash could the damaged party have generated?
 - b) Absent the injurious event, would the



damaged party have had sufficient cash flow to maintain and fund the projected but-for sales growth and service anticipated debt?

- 6) Analyzing the interplay between anticipated growth, fixed, variable, and capital costs, and working capital requirements
 - a) How reasonable are the individual projections of growth when considered in terms of overall growth?
 - b) Do the individual projections appropriately interrelate?
- 7) Verifying that historical but-for performance is consistent with future but-for performance
 - a) The assumptions used to project pre-trial but-for performance should be similar if not the same as those assumptions used to project post-trial but-for performance.
 - b) This does not necessarily mean that pre-trial and post-trial performance should be linear but, rather, that the logical conclusions observed in post-trial projections should relate in some meaningful way to the pre-trial projections.

Present Valuing Past and Future Losses

The actual and but-for performance discussed above is measured in past or future dollars. For example, if the current year is 2005 and the projected but-for profits extend through the year 2010, then the projected profits for 2006 through 2010 must be adjusted to account for inflation and for the risk that the projected level of profits may not be achieved. Correspondingly, historical but-for profits must also be adjusted to account for inflation. This simple example illustrates the crux of financial analysis as it pertains to deriving a value as of the trial date: both the time value of money and the various aspects of risk must be carefully examined before any conclusion of economic damages can be considered supportable. When assessing the present value of past and

future losses incurred by the damaged party, particular attention must be directed towards the following:

- 1) Appropriately applying business valuation methodology
 - a) There are various methods by which to appraise business interests. These methods are also applicable to the determination of lost business value, whether in terms of a claim for diminution of business value or to determine the value of an entire business for a claim of business destruction.
 - b) It is imperative that experts apply the appropriate business valuation method to the business entity or partial business interest being valued.
 - c) The value of most operating companies is generally appraised by considering two core factors: the future economic benefit that the operating entity is expected to achieve and the risks inherent in achieving that future economic benefit. It is important that experts fully evaluate both of these factors and that these factors be considered in concert, since they share a symbiotic relationship.
- 2) Determining the standard of value
 - a) The specific factors of the case must be evaluated in order to determine the standard of value that should be used when appraising any lost or destroyed business value.
 - b) There may be significant errors in economic damage assertions relating to diminished or destroyed business value if experts do not use the appropriate standard of value. The applicable law governing the case will usually dictate the appropriate standard of value.
- 3) Analyzing the risk factors used to derive discount rates
 - a) The riskier the investment or projected economic benefit, the higher the discount rate.
 - b) Does the discount rate adequately cap-

ture the risk inherent in achieving projected sales?

- c) If there are multiple projected streams of income, is each stream of projected income adequately evaluated and discounted appropriately?
- 4) Applying business valuation discounts and premiums
 - a) In addition to the discount rate it may also be necessary to evaluate discounts and premiums that are specific to business valuation, such as premiums/discounts for control and discounts for lack of marketability.
 - b) Experts must be well versed in both the objective and subjective issues that provide guidance in determining the applicability and derivation of these discounts and premiums.

Damage Calculation Models

Under a unified approach there are three variations on the economic damages sustained by an operating entity: a temporary decline in profits, a permanent decline in profits, and a permanent decline in profits followed by the destruction of the business. Each of these models is evaluated below.

Temporary decline in profits

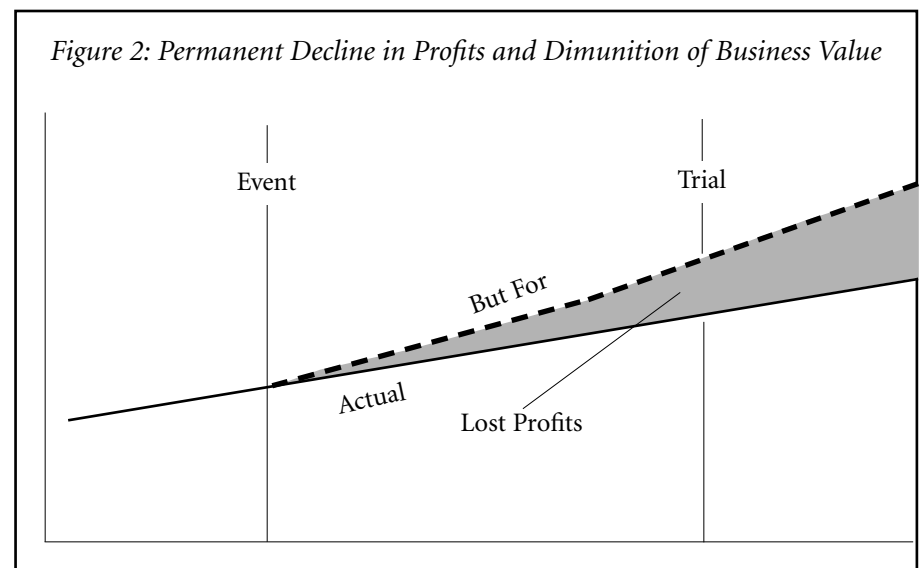
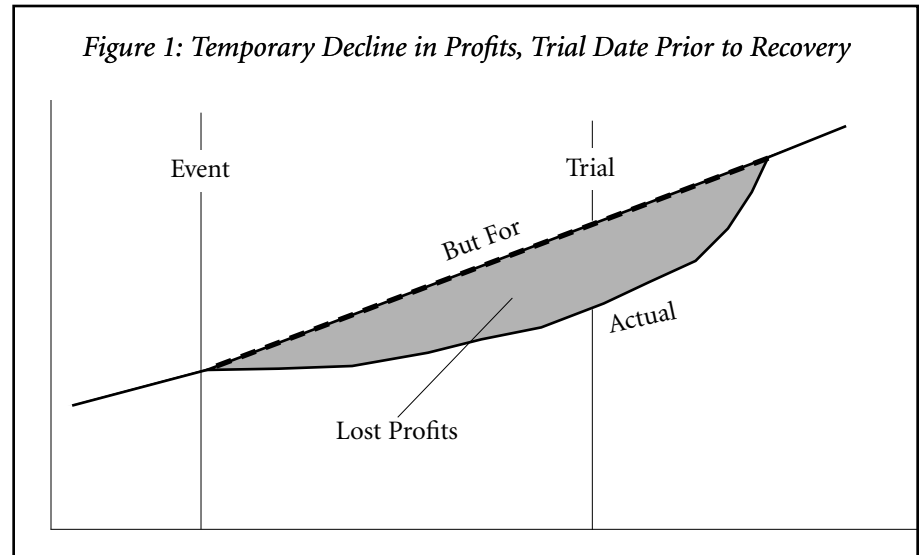
In this model, the injurious event causes the damaged party to earn smaller profits than they would otherwise have earned but-for the injurious event. In the situation shown in Figure 1, the damaged party partially recovers from the effects of the injurious event prior to the trial date and is expected to fully recover at some point subsequent to the trial date. Since this scenario has part of the loss occurring before the trial date and part of the loss occurring subsequent to the trial date, the differential between but-for and actual that exists prior to the trial date is future valued forward to the trial date, while the differential between but-for and actual that is expected subsequent to the trial date is present valued back to the trial date.

Permanent decline in profits

In the situation shown in Figure 2, the damaged party never fully recovers from the effects of the injurious event but is expected to continue operating into perpetuity. Since this scenario has part of the loss occurring before the trial date and part of the loss occurring subsequent to the trial date, the differential that exists prior to the trial date is future valued forward to the trial date while the permanent differential expected to exist subsequent to the trial date is reduced to a value representative of the permanent diminution in the value of the damaged party. In general, this should be done by calculating the differential between post-trial projected but-for profits and post-trial projected actual profits, and then discounting or present valuing that differential back to the trial date using a net discount rate, which in turn should be calculated based on the difference between the risk of achieving the projected but-for profits and the risk of achieving the projected actual profits. Since the calculation of post-trial economic damages seeks to value the permanent decline in business value, the expert must pay particular attention to factors such as the discount rates applicable to projected but-for and actual future profits and the appropriateness of business valuation discounts and premiums.

Permanent decline in profits and destruction of business

In the situation shown in Figure 3, the damaged party never fully recovers but rather goes out of business prior to the trial date. Since this scenario has part of the loss occurring before the trial date and part of the loss occurring subsequent to the trial date, the differential that exists prior to the trial date is future valued forward to the trial date while the differential that exists subsequent to the trial date (which is essentially but-for profits since actual profits are effectively zero) should be converted into a value for the destroyed business as of the trial date. In general, this

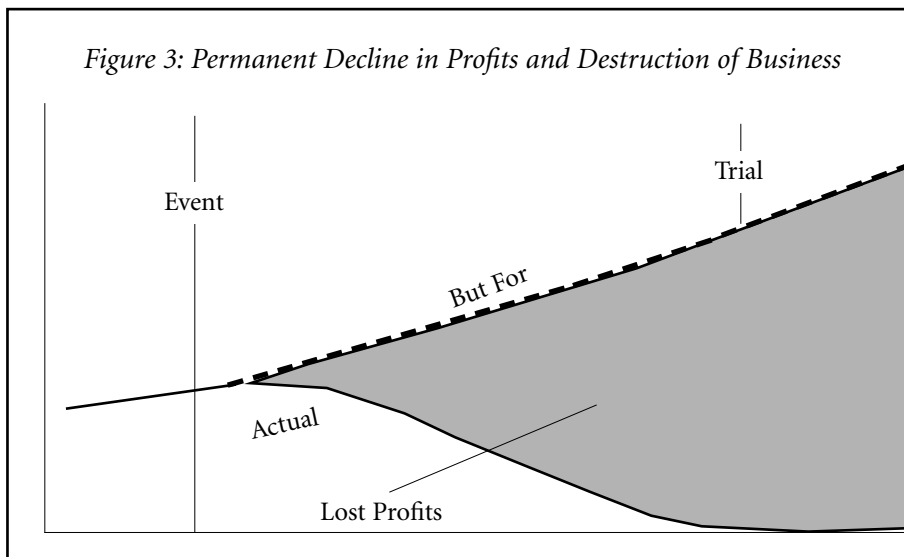


should be done by calculating the post-trial projected but-for profits and then discounting or present valuing that stream of income back to the trial date using a discount rate that reflects the risks inherent in achieving the projected but-for profits. Since the calculation of post-trial economic damages seeks to value the destroyed business, the expert must pay particular attention to factors such as the discount rates applicable to projected but-for future profits and the appropriateness of business valuation discounts and premiums.

Core Skills Required

The ability to identify the components of a well-constructed unified approach to economic damages will only be helpful if the expert also has the requisite skills, training, and expertise to quantify and put those components together. Since a number of organizations purport to offer certification and training in the skill sets listed below, and because this article is not an evaluation of said organizations¹, the authors have elected to bypass the issue of credentials. However, specific skills that should be considered requisite to a thor-

Figure 3: Permanent Decline in Profits and Destruction of Business



ough evaluation of economic damages would include investigative accounting economic and finance, and business valuation.

Causation

The connection between the injurious event and the economic damages incurred by the damaged party is commonly referred to as the causal link. Proving that the damaging party and the injurious event were the proximate cause of the economic damages to the damaged party is known as proving causation.

Causation should be considered a determination based on degrees of responsibility, which the damaged party is responsible for establishing. The damaged party must prove that the injurious event was caused by the damaging party but must do so while minimizing the amount of contributory negligence for which the damaged party might be responsible. For example, if the damaged party contributed in some part to either causing the injurious event or exacerbating the detrimental effects caused by the injurious event, whether directly or indirectly, the amount of economic damages that the damaged party may be entitled to could be subject to downward adjustment.

In proving causation, the damaged

party must also prove that the economic damages they suffered were not caused, in whole or in part, by intervening factors either wholly or partially separate from the injurious event. For example, if a damaged party claims that the predatory practices of a competitor drove the damaged party out of business, they must prove in the process of establishing causation that they did not go out of business for reasons unrelated to any predatory behavior ascribed to that competitor.

Causation can be established either directly or indirectly. Establishing a direct causal link means that the damaged party is able to prove that they were damaged as a direct result of the injurious event. Establishing an indirect causal link typically involves eliminating all of the intervening factors or alternative rationalizations as to why the damaged party suffered economic losses. Although a direct causal link provides the most definitive evidence that the injurious event precipitated the economic damages to the damaged party, such a causal link is often difficult to prove, particularly in complex cases where there are a myriad of intervening factors that provide alternative reasons, completely unrelated to the injurious event, for the damages suffered by the damaged party. These intervening factors often include

claims such as poor cash flows, mismanagement, increased competition, and industry trends. For this reason, the damaging party typically attempts to force the damaged party to prove a direct causal link.

While an indirect causal link does not directly tie the injurious event to the damages suffered by the damaged party, such a causal link can be used to show that the damaged party was impacted by the injurious event despite the lack of a direct connection to that event. Such an example might include instances where a manufacturing company with a single large customer is economically damaged when its single largest customer is put out of business as a direct result of an injurious event.

Damage calculations and causation issues must be addressed simultaneously. They should not be developed independently, since doing so may lead to a theoretical disconnect in associating the appropriate level of economic damages to the injurious event. In all cases, economic damages must flow from the injurious event, which inevitably points to the fact that causation should be the starting point for all of the economic damages models under the unified approach.

Summary and Conclusion

While there may not be any one particular way to estimate the economic damages suffered by an operating entity, the authors' experiences have led them to observe that there are quite a large number of wrong ways to perform such calculations. If experts take the time to learn, understand, and comprehend the unified approach proposed in this article, we believe that the issues contested at trial can be significantly reduced to testimony regarding the variables and assumptions used by the individual experts, which in our opinion is much more productive than arguing the merits of two disparate economic damage calculations, particularly when both may be inadequate.

Focus on...

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¹ For a lengthy discussion of the factors that should be considered when selecting an expert witness, including an evaluation of useful certifications, please refer to *Expert Witness Qualifications and Selection*, an article published by the authors in the Journal of Financial Crime (December 2004)

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The Rule of 72

Craig Hackler, Financial Advisor, Raymond James Financial Services



"How long will it take my investment to double?" This is a common question many may have concerning their investments and think a calculator is needed to provide an answer. But a calculator may not be needed, at all. The tool to use is called the Rule of 72 and, best of all; it is simple and free. This is how it works. If an individual has an investment they think will grow at an assumed rate of return per year, then simply dividing that rate of return into 72 will provide a rough estimate of the number of years it will take for the investment to

double in size.

For example, let's assume an investment is assumed to grow at an average rate of return of six percent each year. Simply divide six into 72 will give a rough estimate that it will take 12 years for this investment to double ($72 \div 6 = 12$). This formula assumes a fixed annual rate of return and the reinvestment of

all earnings. Keep in mind that very few investments offer a guaranteed rate of return and that an investment's past performance does not guarantee future performance.

The rule of 72 may also be used to show the negative power of inflation. This may be an especially handy tool to those individuals in their retirement's years and, also, for those approaching the retirement decision. Using this tool an individual can estimate the number of years it will take for his or her cost of living to double. Or put another way, how long before an indi-

vidual's purchasing power is cut in half.

For example, let's assume an individual is retired and forecasts an inflation rate of five percent per year. An inflation rate, in general terms, is the rate of increase in the prices of goods and services individuals purchase over time. Forecasting an inflation rate of five percent means the individual is assuming the prices of the goods and services he or she will purchase in the future will increase at a rate of five percent per year. Using the rule of 72, simply dividing five into 72 will provide a rough estimate that the individual's cost of living will double in 14 to 15 years ($72 \div 5 = 14.4$).

Of course, this article is no substitute for a careful consideration of all of the advantages and disadvantages of an investment strategy to meet your goals. Before implementing a significant investment strategy consider consulting your financial advisor.

Craig Hackler holds the Series 7 and Series 63 Securities licenses, as well as the Group I Insurance license (life, health, annuities). Through Raymond James Financial Services, he offers complete financial planning and investment products tailored to the individual needs of his clients. He will gladly answer your questions. Call him at 512.894.3473 or 800.650.9517

Designing and Implementing a Systematic Software Training System

Carl W. Hayes

It's 9 a.m. on Monday morning. You take a moment to sip the perfect cup of coffee and gaze upon a perfect world. You work as a legal assistant for the ideal law firm which has the ideal case management system in place. The attorneys at your firm happily focus on representing the firm's client base through the substantive practice of law. The firm invests heavily in its personnel and as a result, you and all member s of your working team receive

quality, up-to-date hands-on training in all aspects of your profession, including software and technology. With very little effort your team can take a case from file to trial for a successful resolution and you are big part of the reason for its success. Clients are happy, profits are up and all is good in the world. Such perfection is a beautiful thing to behold.

Flash back to reality. Your coffee has

just spilled on your desk and you realize that you've been daydreaming! As you try clean up the mess you realize from the mountain of papers and post-its that sit before you, that the world you live in is far from perfect. You know that from experience attorneys do not always *happily* practice law and do not always *effectively* delegate duties to the legal assistants, and that most of the time you and your team members are scrambling to meet deadlines in constant state of chaos. More often than not, you and everyone on your team could benefit from some professional training, *especially in the areas of software and technology.*

According to Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2004-05 Edition*, Paralegals and Legal Assistants, on the

Internet at

<http://www.bls.gov/oco/ocos114.htm> (visited March 06, 2005): "Computer use and technical knowledge has become essential to paralegal work. Computer software packages and the Internet are increasingly used to search legal literature stored in computer databases and on CD-ROM. In litigation involving many supporting documents, paralegals may use computer databases to retrieve, organize, and index various materials. Imaging software allows paralegals to scan documents directly into a database, while billing programs help them to track hours billed to clients. Computer software packages also may be used to perform tax computations and explore the consequences of possible tax strategies for clients."

Litigation technology has become a billion dollar industry thanks to the rapid advancements made in popular cutting-edge software programs and the need for firms and their personnel to understand and manage it. E-discovery and blogs are the buzzwords of the day. There are more choices in software to choose from than ever before. Seven of the most critical areas covered by current legal technology are:

- Case Management
- Litigation Databases
- Imaging/OCR Management
- Transcript Management
- Trial Presentation
- E-Discovery
- Remote Access to Litigation Materials

Each of these areas offers multiple choices in software from which to choose and it seems new and improved versions of these software packages are being released every time we turn our heads. The more a program does, almost by definition the more difficult it is to learn and use. Knowledge and skills in a software product can be come passé in the blink of an eye. While considerable thought is almost always given to the price and features associated with the purchase of a particular software product, the same can

not be said of attitudes toward training. Most firms drop the ball when it comes to have a training system in place to get the most from their investment in software. The biggest problem in the improper use or underutilization of a software product is not that the program isn't appropriate, but that there has been insufficient training. In order to get the most from any investment in litigation support software, it is critical that a strategic plan be designed and put in place to ensure *all* users receive the proper training at the proper time.

The legal assistant can be a key player in helping design a software training system because of being a central figure in a firm's workflow and a frequent user of multiple software packages to accomplish work assignments. They are usually the best source for information on how software is used in the workplace, and can make knowledgeable recommendations on which software products the firm should purchase. They would also have inside knowledge as to which team members (themselves included) require training in the use of software.

Sometimes training programs never get off the ground because of objection to the costs involved coupled with a perceived lack of necessity. In many cases, attempts at implementing a training program are stonewalled by firm policies, personal choices and employee resistance, and as a result, training usually consist of a 1 or 2 day session covering the basics of using a program. Frequently, users are left to the own devices to discover intermediate and

advanced functions of the software. This results in a wide range of skill among members on the same team and cripples efficiency by placing the lion's share of the work on those who master the program. However, in cases where there is a program that provides quality *ongoing* training, knowledge and skills increase, and efficiency increases, which means more work is accomplished in a smoother fashion. Although designing and implementing an effective software training program has certain costs associated with it, failing to implement such a program could be costing firms and their clients more than they realize.

At my training seminars I frequently encounter first time users of a software program, usually excited, wide-eyed attorneys who expect to learn EVERYTHING a software program can do in ONE SESSION, who run off with their laptops under their arms and smiles on their faces, ready to have their staff learn to use the program in ONE WEEK by READING THE MANUAL and using it the next week AT TRIAL. Such a brief encounter is not what I would classify as the successful implementation of a systematic software program. It is tantamount to going to one seminar and thinking that you have everything you need to know to become a jury consultant. Much more thought and planning needs to be given to the need for training than a free weekend on the calendar.

There are different levels of software users: 1) decision makers who evaluate and purchase software (management); 2) those who expect the software to magically deliver a certain product (management and attorneys); 3) those who are charged with organization and delegation of tasks associated with the product creation and delivery of the finished work product (paralegals); 4) those who perform the routine tasks of assembling and entering data to generate the desired product (clerical/admin support); and 5) new hires that may be members of any of the three other levels, but will almost always be behind the



learning curve as they adjust to a new environment. Too often one or more of these user groups is ignored in the training process, thus creating a knowledge gap that impedes efficiency. Each user level will require distinctly different types of training at properly determined overlapping intervals, so that in the end, a maximum return will be gained on the purchase of software in the form of increased productivity, lower outsourcing costs, and more control internal control. Attention must also be given to the integration of existing software products so that users can be made aware of how to use certain software programs in tandem and eliminate redundancy within the case management system and within the training system.

Two sources for training are (1) directly from the vendor and (2) outside technological consultants. A vendor's initial training may be sufficient to get software installed and setup, and in many cases can be packaged together with an annual support/maintenance plan. Consider using outside technological consultants to help design intermediate and advanced training materials or to help develop an in-house training program that will adequately address the needs of all levels of users,

especially new hires who are behind the learning curve. Reference materials and manuals (in addition to the program's online help files) that incorporate screenshots and/or video should be provided or designed that are easy to understand are easily accessible to trainees, such as on a network drive or intranet web page. A system should be established that keeps these materials updated and incorporated into all training sessions. Designating an internal point person to accomplish this task may be wise, even if a professional consultant is retained to get the ball rolling. Although training sessions with a live trainer seem to benefit students the most, e-training programs may be a viable option for students looking to keep skills sharp.

The following are things that can help to make a software training system successful:

- Analyze your needs
- Develop training and documentation
- Design or redesign case management systems
- Train all level of users across working teams
- Retain professional trainers or consultants

- Conduct new hire training
- Train your trainers
- Conduct follow-up training at appropriate intervals to get maximum user benefit

Designing and implementing an effective training program will help legal assistants and their respective firms yield maximum returns on their investments in time and money, which everyone knows are both one in the same. Although such an undertaking takes time to carry out, the payoff makes it more than worth the trouble. You will avoid costly mistakes such as buying software that is never installed, improperly implemented, or under-utilized. In addition, you'll get the most from your software, and accomplish your objectives and solve the problems you have identified.

Carl W. Hayes

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Medical Records 101, Lesson 2

Components of the Medical Record

Janabeth F. Taylor

HOSPITAL RECORDS

Hospital records include, but are not limited to:

Admission Information/Summary - documents date/time of admission, admitting diagnosis. Admitting physician and other basic admission information

Discharge Summary - documents condition at time of discharge, any post discharge instructions for lab tests, physi-

cian appointments and medications prescribed, as well as instructions for physical activity and other treatment modalities.

Admission History and Physical - documents condition at time of admission, usually performed by admitting physician, but sometimes deferred to a medical resident or physician assistant.

There may also be a separate document, "Physician's Admission History

and Physical" in some health care facilities.

Physician's Progress Notes - daily chronology of patient's progress, often gives rationale behind change in treatment or medication and documents physician visits.

Emergency Room Records - documents condition upon arrival, chief medical complaint and may also include emergency room physician evaluation of any tests performed such as ultrasound, radiology and laboratory tests. Also recommendations for referral, admission and/or discharge are obtained here.

Consultation Reports (Physician and other professional.) documents evalua-

tion and recommended treatment by physicians, and other health care providers asked to consult in reference to patient care.

Physician's Orders - documents date and time of treatments and medications ordered by treating physicians. These are to be signed by the physician ordering, even if a telephone order or phone/verbal order given to a nurse.

Operating Room Records and Report (Physician, Nursing and Anesthesia Record) - documents procedure performed, surgeons, nurses and anesthesia personnel present during surgery. Also documents patient condition before, during and after surgery. Some hospitals document post operative care in the "PAR" (post anesthesia recovery) record.

Laboratory Reports - documents results of tests performed in the laboratory. Includes not only blood and urine tests, but also cultures of tissue and microscopic exam of tissue.

Graph Sheets - documents basic vital signs and other basic functions such as urinary and intestinal elimination. Some graphic sheets also document dietary and fluid intake.

I and O record - documents fluid and solid intake and output on a daily basis. Usually tallied on a daily basis, but may be recorded with each shift (two to three times a day)

Treatment Sheets - documents all manner of treatments such as wound care, hot and cold therapy not given in physical therapy, etc.

Medication Sheets - documents medications given. PRN medication is given on an "as needed" basis and may be listed separately from regularly scheduled medications.

Xray/Radiologist Reports - documents radiologist's impression of radiology

tests. Will also contain name of ordering physician.

Physical Therapy Records - documents treatments/therapy given in the Physical therapy department as well as the patients response to therapy.

Speech Therapy Records - documents therapy given by speech pathologist.

Occupational Therapy Records - documents therapy given by occupational therapist. May be included as part of physical therapy records in some institutions.

Nurse's Notes/Nursing Progress Notes - Chronological documentation of patient's condition, physician visits, change in condition and treatments given as well as patient responses. Usually written in longhand, but more and more frequently are seen as a computerized record.

Nursing Care Plans - Each patient has a general plan of care, and the foundation is determined by the policy of the health care facility. However, generally the nursing care plan covers all treatments, medications and therapies ordered for the patient. Goals are also stated for patient care.

Interdisciplinary/Multidisciplinary Progress Notes (Not utilized in all facilities.) - documents progress of each therapeutic department in chronological order, rather than a separate progress note maintained by each department. May include notes made by more than one department, such as speech, physical and occupational therapies.

Other records found but not consistently maintained by all facilities may include:

- Records/Treatment Logs
- Treatment Records, Nursing Treatment Records (Sometimes in with the medication records; sometimes listed separately.)

- Physical Therapy
- Speech Therapy
- Occupational Therapy
- Rehabilitation Therapy, Restorative Services
- Recreational Therapy, Activity Therapy or Service
- Any other form of therapy records
- Visiting Nursing or Home Care Nursing Records
- Records from Independent Medical Laboratories
- Records from Independent Radiology and Nuclear Medicine Services

EMERGENCY SERVICE RECORDS:

- Ambulance Records (EMS Emergency Medical Service) - these records may be maintained by either an independent EMS service or a municipal fire department, or hospital EMS service.
- Emergency Room Records (These are often not part of the hospital records, where the emergency room is operated by an independent contractor.)

In some situations, the records of emergency response personnel such as the local police and rescue portions of the fire department will also apply and will be separate from other EMS records, and a separate request for each entity will be required in order to obtain all records.

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In 2002 she was named the Association of Trial Lawyers of America's Paralegal of the Year. She provides litigation support for attorneys across the United States and specializes in case reviews and Internet information resources. Her website is <http://www.attorneysmedicalservices.com> and her email address is jana@attorneysmedicalservices.com

The Fight Against Human Trafficking

Robert M. O'Boyleⁱ

The Child Victims of Human Trafficking

Human trafficking is a modern-day form of slavery. Victims include young children, teenagers, men and women. Victims of human trafficking are subjected to force, fraud, or coercion to compel them to engage in commercial sex or involuntary labor.

Approximately 800,000 to 900,000 victims are trafficked across international borders annually, and between 18,000 and 20,000 of those victims are trafficked into the United States each year.ⁱⁱ More than half of these victims worldwide are children.ⁱⁱⁱ

Child victims of trafficking are often exploited for commercial sex, including prostitution, pornography and sex tourism. They are also exploited for labor, including domestic servitude, migrant farming, landscaping and hotel or restaurant work – to name just a few potential trafficking situations.^{iv}

The reasons for coming to the United States vary, though often children succumb to exploitation under the guise of opportunity – children believe they are coming to the United States to be united with family, to work in a legitimate job or to attend school. Additionally, children may be subject to psychological intimidation or threats of physical harm to self or family members.^v

Techniques of Human Traffickers

Traffickers frequently confiscate their victims' immigration and identification documents. Traffickers frequently instill in their victims a fear of government officials – particularly, law enforcement and immigration officers. These are two of the challenges in identifying victims of trafficking. But whether you are a law enforcement officer, health care professional, social service provider, or simply a concerned citizen,

there are physical and mental clues that can alert you to a victim:

Child victims of labor trafficking are often hungry or malnourished to the extent that they may never reach their full height, may have poorly formed or rotting teeth and later may experience reproductive problems.

The psychological effects of torture are helplessness, shame and humiliation, shock, denial and disbelief, disorientation and confusion, and anxiety disorders including post-traumatic stress disorder, phobias, panic attacks and depression.

Environmental factors can also aid in identifying child victims of trafficking, including whether the child is living at the work place or with the employer, living with multiple people in a cramped space, and attending school sporadically or not at all.

Victims may experience traumatic bonding ("Stockholm Syndrome") – a form of coercive control in which the perpetrator instills in the victim fear, as well as gratitude for being allowed to live or for any other perceived favors, however small.

Traffickers of children are sometimes family members or sometimes condition their victims to refer to them by familial titles (e.g., uncle, aunt, cousin).^{vi}

Trafficking Victims Protection Act of 2000

The Trafficking Victims Protection Act of 2000 ("TVPA") called for the creation of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons to coordinate anti-trafficking efforts among various U.S. federal government agencies. The U.S. Department of Health and Human Services ("HHS") is designated as the agency responsible for helping victims of human trafficking become eligible to receive benefits and services critical to helping them regain their dignity and to become self-sufficient.^{vii}

HHS is responsible for certifying victims of human trafficking once they are identified. This certification allows victims to receive federally funded benefits and services to the same extent as refugees.^{viii}

Victims of human trafficking in the United States who are non-US citizens are eligible to receive a special visa and benefits and services through the TVPA to the same extent as refugees. Victims who are U.S. citizens do not need to be certified by HHS to receive benefits. As U.S. citizens, they may already be eligible for many benefits.^{ix}

Only adult victims need to receive certification letters from HHS in order to be eligible to access benefits and services. Children under the age of 18 do not have to be certified by HHS to receive benefits.

Through HHS, victims can access benefits and services including food, health care and employment assistance. Certified victims of trafficking can obtain access to services that provide English language instruction and skills training for job placement. Since many victims are reluctant to come forward for fear of being deported, one of HHS' most important roles is to connect victims with non-profit organizations prepared to assist them and address their specific needs. These organizations can provide counseling, case management and benefit coordination.^x

Other federal agencies playing a critical role in assisting victims in human trafficking include:

U.S. Department of Justice:

Investigates cases of trafficking and prosecutes the traffickers.

U.S. Department of Labor: Offers programs such as job-search, job-placement assistance, and job-counseling services, as well as educational and training services and referrals to supportive services, such as transportation, child care, and housing.

U.S. Department of State: Is responsible for coordinating international anti-trafficking programs and efforts.

U.S. Department of Homeland Security: Through the U.S. Citizenship and Immigration Services, and the Bureau of Immigration and Customs Enforcement, the Department of Homeland Security investigates cases of trafficking and is an important partner in victim identification.^{xi}

The "T Visa" was established under the TVPA to allow victims of severe forms of trafficking to become temporary residents of the United States. The Act recognizes that returning victims to their country of origin is often not in the best interest of victims and that victims need the opportunity to rebuild their lives without facing the threat of deportation. A recipient of a T Visa, after three years, may be eligible for permanent resident status if he/she meets the following conditions: They are a person of good, moral character;

They have complied with any reasonable request for assistance in the investigation during the three-year period; and They will suffer extreme hardship if they are removed from this country. The T Visa signifies a shift in the immigration law policy, which previously treated victims of trafficking as illegal aliens subject to deportation.^{xii}

Trafficking in Victims Protection Reauthorization Act of 2003

In December 2003, President Bush signed important legislation that authorized more than \$200 million across the federal government to combat the practice of human trafficking – including children forced into prostitution. The Trafficking Victims Protection Reauthorization Act of 2003 ("TVPRA") renews the U.S. government's commitment to identify and assist victims exploited for labor and sex in the United States and worldwide.^{xiii}

The TVPRA augments the legal tools which can be used against traffickers by empowering victims to bring federal civil suits against traffickers for actual and punitive damages, and by including sex trafficking and forced labor as offenses

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under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). It also encourages the nation's 21,000 state and local law enforcement agencies to participate in the detection and investigation of human trafficking cases.

HHS has, in 2004, broadened its role in implementing the law's victim-centered, compassionate approach to finding and aiding the victims of this modern-day slave trade. HHS has launched a major public awareness campaign targeted at local officials and service providers most likely to encounter victims, to find, rescue and restore victims to a humane condition of life.

On March 11, 2004, HHS' Secretary, Tommy G. Thompson, announced "four tools to help crack down on the evil practice of human trafficking, as well as assist those who have been victimized." Those tools include:

1. A toll free number (888-373-7888) run by the Covenant House, sponsored by HHS in collaboration with the Department of Justice, to allow victims of trafficking to be instantly referred to a pre-screened aid organization in the victim's area.
2. A website (www.acf.hhs.gov/trafficking) that serves as a clearing house on helping victims of human trafficking.
3. Initially, a three-city public awareness effort (Philadelphia, Atlanta and Phoenix) to education Americans on the problem of human trafficking and how they can help victims in their community.
4. A public services television announcement shared by HHS and the United Nations to educate the public on a national level about human trafficking.^{xiv}

Conclusion

President Bush, in a recent speech to the United Nations, said that: "The victims of sex trade see little of life before they see the very worst of life – an underground of brutality and lonely fear. Those who create these victims and profit from their suffering must be severely punished. Those who patronize this industry debase themselves and deepen the misery of others. And governments that tolerate this trade are tolerating a form of slavery."

Human trafficking is a hidden evil that results in enormous human misery. The foregoing information is provided to assist the reader in recognizing and providing crucial information to child victims of human trafficking, as well as their friends and family.

Bob is a trial partner with Strasburger and Price, LLP in its Austin office. His areas of practice include trials and appeals in intellectual property, securities, professional liability, insurance coverage and banking/asset based lender litigation, as well as business litigation generally.

Mr. O'Boyle currently serves as chair of Lawyer Referral Service, as a director of Volunteer Legal Services of Central Texas, and as a director of the Austin Bar Association.

ⁱ Partner, Litigation, Strasburger and Price LLP, Austin, Texas.

ⁱⁱ U.S. Department of Health and Human Services, Press Release dated March 11, 2004.

ⁱⁱⁱ U.S. Dept. HHS Fact Sheet: Child Victims of Human Trafficking.

^{iv} *Id.*

^v *Id.*

^{vi} *Id.*

^{vii} U.S. Dept. HHS Fact Sheet: Federal Efforts to Assist Victims of Human Trafficking.

^{viii} U.S. Dept. HHS Fact Sheet: Certification for Victims of Trafficking.

^{ix} *Id.*

^x U.S. Dept. HHS Fact Sheet: Federal Efforts to Assist Victims of Human Trafficking.

^{xi} *Id.*

^{xii} U.S. Dept. HHS Fact Sheet: Certification for Victims of Trafficking.

^{xiii} U.S. Dept. HHS Press Release dated December 22, 2003.

^{xiv} U.S. Dept. HHS Press Release dated March 11, 2004.



PARALEGAL DIVISION ANNOUNCES CONTINUING LEGAL EDUCATION SCHOLARSHIP FOR TAPS

For the upcoming 2005 TAPS seminar (Texas Advanced Paralegal Seminar, a three day CLE seminar), the Paralegal Division of the State Bar of Texas will award at least two (2) scholarships for the registration fee to attend the TAPS 2005 seminar. Below please find the guidelines and application for applying for this scholarship.

1. The Recipient must apply for or be a member of the Paralegal Division of the State Bar of Texas.
2. To apply for a TAPS scholarship, the applicant is required to give a written essay regarding the paralegal profession. The essay should be two (2) pages and double-spaced.
3. To apply for a TAPS scholarship, the applicant is required to provide two (2) personal references, which describe the applicant's involvement in the paralegal profession.
4. Financial need shall be a contributing factor, but not a requirement. However, if two or more applicants are tied in meeting the criteria for the scholarship, financial need shall be the determining factor.

Other

1. No money will be sent directly to the recipient.
2. The scholarship for TAPS shall cover the cost of registration only.
3. The scholarship selection committee for reviewing scholarship applications for TAPS shall be composed of the Chair of the TAPS Planning Committee, one Planning Committee Sub-Committee Chair, the Board Advisor to the TAPS Planning Committee and the President-Elect of PD as a non-voting member.

The Paralegal Division of the State Bar of Texas will award scholarships for TAPS 2005, which will cover the cost of registration in accordance with the TAPS scholarship guidelines.

TAPS 2005 SCHOLARSHIP APPLICATION

IMPORTANT: ALL APPLICATIONS FOR A SCHOLARSHIP FOR TAPS 2005 MUST BE RECEIVED BY FRIDAY, July 29, 2005. DATE OF TAPS 2005: September 21-23, 2005, Austin, TX

Name _____ PD Membership No. _____

Home Address _____

Home Telephone _____ Email Address _____

Work Address _____

Work Telephone _____ Fax Number _____

Birthdate _____ Employer _____

Are you a member of a local legal assistant organization that offers a scholarship award? _____

Give a detailed description of your reason for seeking a scholarship to TAPS 2005: _____

Give a detailed description, if any, for your reasons for financial need: _____

Attach your two (2) personal references and your written essay to this application. Applications should be mailed to: Lisa Sprinkle, CLAS, Chair of the TAPS Planning Committee, 5324 Santa Teresa Drive, El Paso, TX 79932. Scholarship recipients will be notified by letter by August 15, 2005.

Applicant's Signature

Attach any additional explanations

IT'S OFFICIAL — NAME CHANGE APPROVED BY MEMBERS AND SBOT PARALEGAL DIVISION, STATE BAR OF TEXAS

AUSTIN, TEXAS — May 4, 2005

The Legal Assistants Division, State Bar of Texas (LAD) is pleased to announce that effective April 8, 2005, the membership of LAD and the Board of Directors of the State Bar of Texas (SBOT) approved LAD's name change from "Legal Assistants Division" to "Paralegal Division." As of May 4, 2005, LAD members approved such change to its Bylaws. Additionally, the SBOT's Standing Committee on Legal Assistants will now be called "Standing Committee on Paralegals," and a new definition has been approved to reflect the use of the term "paralegal" exclusively, in lieu of "legal assistant."

The newly re-named Paralegal Division has been working on this change for approximately ten years by way of open forums, surveys, and meetings with its members and members of the SBOT. The Standing Committee on Paralegals and Paralegal Division will soon begin working with the SBOT's Texas Rules on Disciplinary Rules of Professional Procedure Conduct Committee for the development of annotations to the new definition of "paralegal." Clarifying the

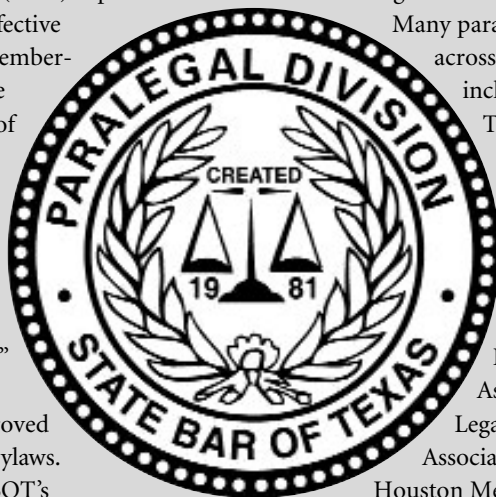
definition of paralegals will assist courts in awarding attorneys fees and make clear the types of tasks paralegals handle. In the long run, these changes will increase the level of professionalism and in turn, increase protection of the public, as well as aid in the delivery of legal services to the public.

The trend nationally over the last several years has been indicated preference for the term "paralegal" to the exclusion of "legal assistant." The National Association of Legal Assistants adopted "Certified Paralegal" as an alternative to "Certified Legal Assistant" for the designation granted upon passage of its certifying exam. In August 2003, the American Bar Association House of Delegates voted to change the name of its Standing Committee on Legal Assistants to the Standing Committee on Paralegals.

Many paralegal associations across the country, included several here in Texas, have changed their names to reflect this trend (El Paso Association of Legal Assistants became El Paso Paralegal Association; Houston Legal Assistants Association became Houston Metropolitan Paralegal Association).

This is a long awaited moment for the Division in an attempt to take the profession into the future and eliminate the confusion that has developed, not only in the State of Texas with large corporations, government agencies, and law firms, but also nationally, between the two terms, i.e., "legal assistant" and "paralegal." These were once thought to be synonymous terms; however, since society's movement to do-away with the term "secretary" and utilize the term "assistant," more distinction between the titles has become necessary.

For more information, contact the Paralegal Division at pd@txpd.org or on the web at www.txpd.org.



REPORT ON AMBASSADOR TRIP TO HOUSTON, TEXAS

February 25, 2005

By Michele Boerder



I gave an Ambassador presentation for the Division to a seminar in Houston, Texas sponsored by the Houston Metropolitan Paralegal Association ("HMPA" – formerly known as Houston Legal Assistants Association¹) on Friday, February 25, 2005. My contacts were Phyllis Tidwell and Trisha Griggs. Approximately 40-50 attended, as well as a number of vendors with exhibition booths. I took a "straw poll" of how many attending were LAD members, and it appeared to me that about 70% were members from the response.

I provided two sections of their program: an overview of the proposed Name Change and a presentation on TBLS certification and its history, including the recent 10th anniversary. I provided materials that went into the handouts to the registrants: The 2003 Board Resolution, the pending Bylaws amendment, TBLS criteria and testing information/deadline. Photos were taken and will be forwarded to Rhonda Brashears.

Note: When HLAA voted to change their association name, of 72 that voted, 70 voted FOR the name change;



PARALEGAL DIVISION HOSTS 2005 TEXAS ALLIANCE OF PARALEGAL ASSOCIATIONS CONFERENCE

The Division hosted the 2005 conference of the Texas Alliance of Paralegal Associations. The meeting was held in Austin on April 15th and 16th. Friday's activities featured "A Day at the Capitol" and included the following:

- Tour of the Capitol
- Lunch in the Capitol
- Presentation by Hal Talton, Chief of Staff and General Counsel for Representative Dan Gattis
- Presentation by Barry McBee, First Assistant Attorney General, and his Legal Assistant, Deborah Woltersdorf
- Presentation at the Texas Supreme Court by Justice Priscilla Owen
- Presentation by Representative Dan Flynn's office of House Resolution No. 865 declaring October 23, 2005, as Paralegal Day.

Friday evening the Division hosted a social at the hotel, sponsored by Apex Document Solutions, followed by a dinner cruise on the Lone Star Riverboat spon-

sored by Cypher Litigation Coding, Delaney Corporate Services, and Special Counsel.

This year for the first time all association reports were provided on a CD, courtesy of ImageNet Litigation.

Each attendee received an aluminum luggage tag from the Division. The tags include a stylized drawing of the dome of the Texas Capitol (in keeping with our theme, "A Day at the Capitol") as well as references to the Division's 25th anniversary. The TAPA 2005 luncheon on Saturday was sponsored by American Language Technologies.

There were a total of 34 attendees at the Day at the Capitol on Friday, 42 attended the social and Lone Star Riverboat Cruise, and 37 attended the Saturday TAPA meeting. All the attendees seemed to enjoy the

event and as always, appreciated the wonderful exchange of information and ideas.

THE DALLAS AREA PARALEGAL ASSOCIATION

Hit it big at the NFPA 2005 Convention in Las Vegas April 28-30. S. Kristine Farmer, RP, a past president of DAPA and the Legal Assistants Division, was elected president of the National Federation of Paralegal Associations early Saturday morning. She officially took office on Sunday, May 1st when Diana Smiley, RP passed the gavel to her in an emotional installation at the close of the convention. Early in her first speech as president, Kristine thanked her local association and its members for their support and friendship.

During the awards ceremony held at the luncheon, two of the three member awards were bestowed on Paralegal Division and DAPA members: Michele Boerder, CLA, was awarded the Paralegal of the Year award, which is based on the candidate's on-the-job achievements that have contributed to the expansion of the paralegal profession. Michele announced she had just celebrated her twenty-fifth year as a paralegal.

Lou Bugarin, was announced the winner of the Local Outstanding Leadership Award for her involvement in DAPA, CASA and other pro bono activities. In her acceptance, Lou said she was amazed at receiving an award for simply working with her friends and doing something she loved.

New Paralegal Website
www.txpd.org

Scruples

Dear Ethics Chair . . .

Laurie Borski, Ethics Chair

On June 1st our website is scheduled to debut a new addition: Ethics FAQs. From time to time, we receive inquiries from paralegals and the public on topics related to paralegal ethics via our website (<http://www.txpd.org>) and/or by e-mail. In the interest of education, and as a “pre-view” of sorts, I am sharing some of the types of questions we have received with you. (None of the names are real and the inquiries have been changed to be more general and to protect personal information.)

Q: Dear Ethics Chair, I contacted someone listed in the telephone book for paralegal services in connection with a family matter. The person did not act in a professional manner, demanded that I pay a retainer up front (which I paid), and has not done the work they were paid to do. Do you think the person was not a paralegal and that I was scammed? Signed, Worried.

A: Dear Worried, I’m afraid you were scammed, regardless of whether the person was a paralegal. In the State of Texas, it is against the law for paralegals to give legal advice directly to the public. The Texas Disciplinary Rules of Professional Conduct state that “the public has a right to be protected from the mistakes of the untrained, and the schemes of the unscrupulous, who are not subject to the judicially imposed disciplinary standards of competence, responsibility and accountability.” All paralegals in Texas must work under the direct supervision of an attorney

who is licensed to practice law in Texas. Only a licensed attorney can decide whether to accept you as a client and what to charge you for legal services. I’m afraid there is nothing you can do but call the police and report this incident. In addition, I encourage you to report this person to the Texas Supreme Court’s Unauthorized Practice of Law (UPL) Committee. To file a grievance with the UPL Committee, go to <http://www.txuplc.org>. Signed, EC.

Q: I know someone who claims to render paralegal services directly to the public in the Houston area and I have some really interesting information on that person! Signed, In The Know.

A: Dear In The Know, I am authorized to take action against this person only if he/she is a member of the Division. I checked my roster for the name you have provided to me, and the person is not a member.

Therefore, I suggest you provide whatever credible information you happen to possess on this person to the Unauthorized Practice of Law (UPL) Committee. You may contact the Committee through the State Bar of Texas at 1.800.204.2222 or on the web at <http://www.txuplc.org>. Signed, EC.

Q: I am a paralegal in another state or work for

a paralegal services company that provides nationwide legal document preparation services. Do you have to be licensed to practice law in Texas in order to provide basic legal document preparation services? Are there any laws or guidelines on legal document preparation in Texas? Signed, Seeking New Markets

A: Dear Seeking, the venture you describe appears to be the unauthorized practice of law. In the State of Texas, one who provides legal services directly to the public must be licensed to practice law in Texas. Section 81.101 of the Texas Government Code states in part that “the ‘practice of law’ means the preparation of a pleading or other document incident to an action or special proceeding . . . including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect



of which under the facts and conclusions involved must be carefully determined.” Preparing a “legal document” would certainly fall under the provision of legal services directly to the public as would the choice of the proper form to use for the circumstances. Paralegals in Texas must work under the supervision of an attorney licensed to practice law in the State of Texas. From your inquiry, it sounds as if your business provides legal services directly to the public without attorney involvement. In Texas, no one but an attorney may own a business that renders legal services directly to the public. In the rendering of legal services, the decision on whether or not to accept someone as a client and what fee to charge for the services provided is reserved for licensed attorneys. You may wish to review the Texas Disciplinary Rules for Professional Conduct for more detailed information. They can be found at <http://www.texas-bar.com>. Signed, EC.

Q: *My attorney is out of the office all week and we have discovery responses due tomorrow. As a paralegal, am I allowed to sign his name by permission to the responses or should I just negotiate an extension? Signed, Out of Time.*

A: Dear Out, only an attorney who is licensed to practice law in the State of Texas, or the party if not represented by an attorney, may sign a pleading, either in hand or by stamp. T.R.C.P. 45(d). The signatures of attorneys or parties constitutes a certificate by them that they have read the pleading, that to the best of their knowledge, information and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. T.R.C.P. 13. With the exception of parties not represented by an attorney, nonlawyers are not permitted to sign certificates of service or certificates of mailing. The certificate by an attorney or party shall be prima facie evidence of the fact of service. T.R.C.P. 21a. As for the extension, only a licensed attorney may enter into an enforceable agreement. T.R.C.P. 11. I’m sorry, but unless there is another licensed attorney in your office who could speak

with your attorney and obtain permission to sign the pleadings, you appear to be . . . out of time on this one. Signed, EC.

Q: *Is it legal for paralegals to form a business entity for legal services and keep an attorney on staff in the supervisory/responsibility role? Can paralegals form a company that offers paralegal services? Signed, Curious.*

A: Dear Curious, anyone who provides legal services directly to the public must be licensed to practice law in Texas. As paralegals, all of our work is done under the supervision of a licensed attorney. If you form a business in which paralegals provide legal services directly to the public and an attorney would “supervise” or “be responsible” by merely being “on staff”, it would be, or would come very close to, engaging in the unauthorized practice of law. It is not adequate to have an attorney “on staff” if that attorney is not the one providing legal services directly to the public. If you are thinking along the lines of a freelance paralegal that contracts work to attorneys or law firms, I don’t see a problem. In Texas, no one but an attorney may own a business that renders legal services to the public. In the rendering of legal services, the decision on whether or not to accept someone as a client and what fee to charge for the services provided is reserved for licensed attorneys. By the way, in making this reply to you, I want to be clear that I am not a licensed attorney nor should my reply be construed as an offer, or an intent to offer, legal or business advice. Signed, EC.

Q: *I am a paralegal and have a question about continuing legal education (CLE). I have registered and paid to attend an online CLE course. Another paralegal in my office wants to sit in with me during the course. Will that be a problem? Signed, Saving Money*

A: Dear Saving, it would only be a problem if your co-worker expects to claim credit for attendance without the benefit of having registered and paid for the course. Let me ask you this: would it be ethical for the other paralegal to attend a live CLE presentation without having

registered or paid and yet claim full credit for attendance? Or, would it be ethical for the other paralegal to register and pay for a course, attend but leave early, yet still claim credit for full attendance? (Hint: the correct answer to both is “no.”) The online courses are offered as a convenience and savings to paralegals who may find it difficult to attend live presentations due to location, financial and/or work constraints. Everyone who participates is expected to act responsibly and ethically to ensure the integrity of the system. Leave early from a CLE seminar if you must, but do so knowing that you are entitled to claim credit only for that portion of the seminar you actually attended. Reading the seminar materials on your own time (or on the plane ride home) would count as “self study,” and not as “attendance.” Signed, EC.

Q: *Can a person work as a paralegal in Texas if they have pled guilty to a felony and are currently serving adjudicated probation? Can a person who has been disbarred or suspended from the practice of law work as a paralegal in Texas? Signed, This Question Was A Class Assignment.*

A: Dear Class, the answer to both questions is yes, so long as they are working under the direct supervision of an attorney licensed to practice law in Texas. There is nothing of which I am aware that would preclude such persons from working as a paralegal in Texas. However, the Paralegal Division of the State Bar of Texas specifically excludes those who have committed a felony from membership. It is possible that local paralegal organizations might also exclude such persons from membership. This response should earn a passing grade! Signed, EC.

© 2005 Laurie Borski

Laurie Borski is Chair of the Professional Ethics Committee of the Paralegal Division, State Bar of Texas. She has served on the Division’s Annual Meeting and Election Committees and is a past president of the Alamo Area Professional Legal Assistants in San Antonio. You can reach her at 210.250.6041 or laurie.borski@strasburger.com.

IMPORTANT NEWS

Continuing Legal Education

ONLINE CLE

- The Paralegal Division offers online CLE via the PD website. To participate in online CLE, please go to www.txpd.org and select CLE/Events.

CLE REQUIREMENT

- ACTIVE AND ASSOCIATE members of the Paralegal Division are required to obtain six (6) hours of CLE (2 of which can be self-study). CLE hours must be obtained between June 1 – May 31 of each year.

CLE CALENDAR

- A statewide CLE calendar can be found on the PD website at www.txpd.org under Upcoming Events/CLE. You can find a variety of CLE programs offered around the State. Please check the PD website often because the calendar is updated weekly.

Membership Information

CHANGES TO MEMBER INFORMATION

- Paralegal Division members can now change their credentials, addresses, email addresses, preferred mailing address and/or phone numbers via the State Bar of Texas website. Go to www.texasbar.com; click on MyBarPage (top of home page). If you have never visited this page, you will need to set up a pin/password. Your password to set up your **NEW Pin/password** is the last four digits of your social security number (**if the State Bar does NOT have your social security number on file, you will not be able to use this area nor will you have access to MyBarPage**); once you set up the new pin/password, you will be able to enter this section of the website to update your member records. If you have any problem accessing this page, please contact the Membership Department at 1/800-204-2222, ext. 2114.

MEMBERSHIP CARD

- Need to replace your membership card? Please send \$5.00 made payable to the Paralegal Division along with a letter requesting a new membership card to the Membership Department, State Bar of Texas, P. O. Box 12487, Austin, TX 78711.
- Were you ever issued a membership card? If no, please contact the Membership Department of the State Bar of Texas at 1/800/204.2222, ext. 2114 or email at jmartinez@texasbar.com

DELL COMPUTER DISCOUNT

- The number assigned to the Paralegal Division by Dell Computer Corp is: SS2453215. This is the number you should use to receive the 10% discount for purchase of computers. However, Dell **does not** have the 10% discount special continuously. Dell sends a notice when the discount is offered to our members at which time it is forwarded to the PD members via the PD E-group. You may try to use this number anytime, but there are no guarantees that you may receive the discount at the time of access. Notices will continue to be forwarded to the PD E-Group when the discount is offered by Dell Computer Corporation.

PD Website Information

MEMBER DIRECTORY ONLINE

- A membership directory is set up on the PD website under the Members Only area. By default, your membership information is listed in the online membership directory. If you would like to suppress showing your listing to other members, go to the Members Only "Edit My Profile" function to display your listing and then uncheck the "publication" box. If you haven't already done so, you might want to include info about adding member specialties through the same interface. If you need changes made to the online membership directory, you must make those changes using the procedures set

out in the above **CHANGES TO MEMBER INFORMATION** procedures.

MEMBERS ONLY AREA

- The Members Only area of the PD website is for current members of PD only. If you are a member of the Paralegal Division and cannot access this area, please send an email to pd@txpd.org with your particular problem. Access is automatically given to members of the Paralegal Division. Access to the members-only area is available within two weeks from the date of the acceptance notice mailed to the individual by the Paralegal Division Coordinator.

PD E-GROUP

- **How do I sign up for the PD E-Group?**
- Going to trial in a "foreign" jurisdiction and want some tips from those who have gone before? Need a form but do not know where to turn? Then you need to sign up for the PD E-group! This is a members-only group and a benefit of being a member of the Paralegal Assistants Division (PD).
- To sign up, go to www.txpd.org, click on Members-Only and choose E-Group. There will be directions on how to sign up. Once you have signed up, you will begin receiving emails from the members of PD.
- For those who prefer not to be interrupted with email notifications, select "digest" for the PD email exchange. Emails are collected and distributed one time a day in one email.
- **How Do I change my PD E-group email address?**
- **Instructions:**
- The PD E-Group created by the member is Password-protected, only the member has access to change a member's PD E-Group email. Go to www.txpd.org, click on Members-Only, click on PD E-Group, enter your password, unsubscribe the current email address, and create a new email address where you want to receive your PD E-Group messages.



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Capitol Services' knowledgeable staff can meet your deadlines without breaking your budget. Let us provide a detailed proposal, outlining costs and response times for your next project, no matter what size.

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