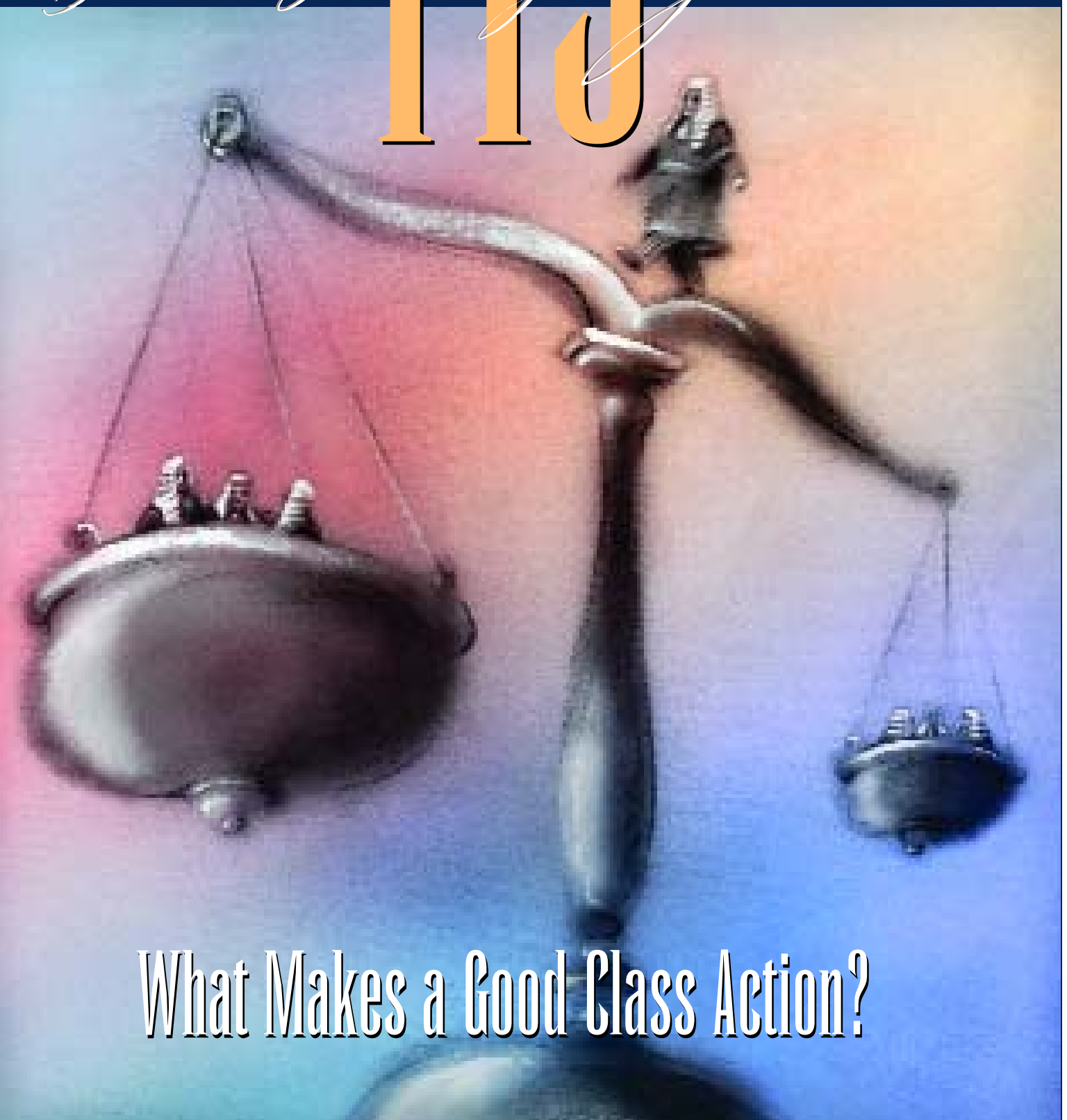
FALL 2007 VOL. 13 NO. 2

Texas Paralegal Journal

TPJ



What Makes a Good Class Action?

PRESIDENT'S *Message*

Patricia J. Giuliano

Once again we find ourselves at the beginning of another Board year looking forward to more great things from the Division and our members. Having been a member of the Division since 2001, it is my great honor to serve as your President this next year. I pledge to work closely with the Board of Directors to represent all the members of this great organization.

This year our goals and initiatives surround a theme of awareness and service; *A Division with Vision…Empowering Paralegals.* One initiative which puts our "*Vision*" into action is the establishment of procedures meant to increase awareness of pro bono opportunities and community service in each of our Districts. The Division will be working with the Access to Justice Foundation to match paralegals and attorneys for the provision of pro bono services. Also, a county-by-county listing of individual pro bono opportunities can be found on the Division's website. (*Go to:* http://txpd.org/selector_programs.asp. These listings are regularly updated so keep checking back if there is not a current listing which fits your schedule. In addition to the aforementioned pro bono opportunities, the Directors in each District will be sending out information regarding community service opportunities available in your area. Through service to those less fortunate we can not only show our compassion, but also our professionalism in the way we carry out that service.

We also plan to place more emphasis on marketing the Division to attorneys, legal administrators, paralegal schools, paralegals, and the judiciary in an effort to "*Empower Paralegals.*" Our marketing plan will use the new Standards as its cornerstone and emphasize education not only as a basis for use of the term "paralegal," but also in the context of continuing legal education to maintain professionalism.

Another marketing effort which began last year will come to fruition this year. The much anticipated *Paralegal Ethics Handbook* is almost ready for print. The text has been authored completely by members of our organization and will be distributed by West Publishing. This publication should bring further attention to the professionalism of our members nationwide. More information on the publication of the book will be forthcoming in your email and through direct mailings from West. Please look for these advertisements and take advantage of early pre-publication discounts.

In addition to these highlighted goals, the Division will continue to strengthen our on-line CLE offerings, facilitate excellent CLE offerings at the local level, and once again offer three days of CLE at our annual TAPS seminar. We will be returning to Addison, Texas in October for TAPS and participants will experience days filled with interesting and informative presentations, and fun-filled evenings centered on social and networking opportunities. Oh, and did I mention, the Division is planning its fourth trip abroad, this time to the Emerald Isle. Just think how beautiful the Irish countryside must be in Spring!

As always, there is much to do, and I look forward to working with you this next year to empower each of us with a vision for the future of our profession.

Patti

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The ***Paralegal Ethics Handbook*** is an essential resource for experienced paralegals, those new to the profession, and the attorneys working with their paralegal colleagues. The Handbook is also a quick and easy to use classroom reference for paralegal educators.

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Focus on . . .

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Hot "Cites"

Columns

Et Al.

EDITOR'S *Note*

By Heidi Beginski, ***Board Certified Paralegal, Personal Injury Trial Law, Texas Board of Legal Specialization***

This is my first Editor's Note and I am rapidly approaching information overload as the Fall issue nears printing. Since I first became involved with the Paralegal Division (or LAD, as it was called in the old days), it has been an incredible experience and I am grateful to the Board of Directors who sufficiently trusted my skills to allow me the opportunity to serve at the helm of TPJ. The course will not always be easy, nor will the waters always be smooth, but the membership of PD continues to amaze me with its desire to grow in our knowledge and professionalism. We are a diverse group who share common goals and, I have learned, an intense desire to improve our image as a whole and our reputation as professionals.

I've been blessed with many mentors in my life, in the fields of journalism and paralegalism, each offering a different perspective and shaping a different facet of my abilities. I could never "be" them, but I'm a better paralegal and a better person today for having known them. They were terrific role models, for whom I am deeply grateful. I won't delineate all the people and projects that have brought the TPJ to this juncture, but I specifically want to thank PD Coordinator Norma Hackler CMP, TPJ Immediate Past Editor Rhonda Brashears CP, PD Immediate Past President Javan Johnson ACP, and PD President Patricia Guiliano, as well as the 2004–2007 Executive Committees and Boards of Directors, with whom I have had the pleasure to serve, for their hard work and patience. Their team spirit and vision have kept PD in the forefront of our profession.

And now, for the requisite shameless pandering, and as way of thanking those who blazed the trail for this new chapter in the life of TPJ by paving the way for those who follow, I ask that you please keep TPJ in mind when you encounter a quality substantive legal seminar or article and consider sharing it with others in our profession by submitting it for publication in the TPJ.

Finally, if you are happy with the TPJ, please share it with other paralegals and use it to encourage membership in the Paralegal Division. If you are not happy with the TPJ, please contact me or any other member of the Publication Committee or your District Director. The old axiom really applies—the TPJ cannot not be its best without YOU.

Texas Paralegal Journal (ISSN# 1089-1633) is published quarterly in Winter, Spring, Summer and Fall for $15 set aside from membership dues for a 1-year subscription by the Paralegal Division of the State Bar of Texas, 3505 Black Mesa Hollow, Austin, Texas 78739. Periodical Postage Paid at Austin, TX. POSTMASTER: Send address changes to the *Texas Paralegal Journal,* P.O. Box 1375, Manchaca, Texas 78652.

Circulation Spring 2007: Total Printed: 2,000; Paid or Requested: 1,698; Mail Subscriptions: 1,698; Total Paid and/or requested circulation: 1,698; Free Distribution: 0; Total Distribution: 1,698; Office Use or Leftover: 302.

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The *Texas Paralegal Journal* is published quarterly as a service to the paralegal profession. A copy of each issue is furnished to the members of the Paralegal Division as part of their dues.

DEADLINE FOR SUBMISSION OF ARTICLES FOR THE FALL ISSUE IS OCTOBER 15, 2007.

Focus on . . .

What Makes a Good Class Action?

Stephen Woodfin

We like to think of becoming involved in a class case as something akin to a professional marriage. Think hard before you take the plunge.

Over the years, we have developed a simple class action evaluation test. Since it is our own, homegrown protocol, we call it the **Woodfin-Holmes Class Action Test.** It has never failed us. We receive calls from many people wanting to discuss potential class cases and we always walk through the following four steps.

STEP ONE: Are they doing it?

Although this step looks unnecessary, we can assure you it is not.

This is the **"if I could just catch them doing X, I would have a great class action**" prong of the test. Usually when people talk about something like this, they begin with "I'll bet they are doing X."

It is not enough that someone **may** be doing something. The Federal Rules require the one bringing the action to investigate the facts. Sometimes determining the facts is relatively easy; on other occasions, you will need to hire one or more experts to help you. For instance, before we brought the Honda odometer case, we tested a number of vehicles ourselves and brought in an expert to test others. This was time and money well spent. The more knowledgeable you are about the facts, the more prepared you are to move forward.

As part of the first prong of the test, you should try your best to poke holes in your case. Ask hard questions about why the facts are as they are. Ask your expert how he explains the facts. Ask him about alternative factual theories that are inconsistent with your theory of the case. You can be sure your opponents will do their own investigation and try to spin the facts to their advantage. The more you can anticipate their defenses, the better off you are.

STEP TWO: Is it against the law?

Should a lawyer be able to tell if a practice is against the law? Not if her experience is anything like ours. Sometimes a set of facts fail the smell test, but do not rise to the level of illegality.

This prong deals with the visceral reaction people have to certain practices. It is the "**It just ain't right**" component. **A gut feeling that something is not right is not a sufficient basis for a class action.**

What law does the practice violate, if any? The answer to this crucial inquiry impli-

cates a number of critical procedural and substantive issues.

We once looked at a case in which the issue was whether a bank had to pay interest to its mortgage customers when it received insurance proceeds because of a total loss to the mortgaged property and the proceeds exceeded the balance on the mortgage. The banks would routinely hold the excess funds belonging to the customer for sixty to ninety days, then issue a check for the excess without paying any interest to the customer. Our immediate reaction was that the bank made money on the excess during the interim period, which, in fairness, should go to the customer. Something like that has to be against the law.

Wrong. We found there was a state statute directly on point that allowed the bank to refund the money without paying interest. It would have been a good case if the bank's actions had been illegal.

Other examples of this sort of thing fall into the category of "it's not as good as it can be." There are myriad instances in which a product performs its basic function, but could be better. Unless there is an obvious flaw a manufacturer should have corrected, you are wasting your time trying to make the product the basis of a class action. The law does not require perfect products and consumers do not expect them.

The point here is that the law is complex and no one knows all of it. Within various sectors of the business community, there are specific statutes that modify, or altogether negate, common law. Likewise, if the target activity is within the province of one or more regulators, you may find the regulator has already blessed the practice. While this may not deal a deathblow to your case, it complicates it exponentially. Many courts give great deference to a regulator's interpretation of an action. Some state class action rules require you to litigate your case at the administrative level before you can bring it at the courthouse. You may lose months or years in this process.

...class actions allow you to bring all your claims through one representative client. This approach allows the strong claims to succeed and the marginal ones to survive.

On a more positive note, some statutes have class action procedures built right in. These procedures can streamline your case, providing you a tight, narrow focus and a well-defined path to class certification. They may also contain fee-shifting provisions requiring the losing party to pay the fees of the prevailing party.

Statutory causes of action also influence the case's **jurisdictional** posture. If the practice violates a federal statute, then your case may take on a national character. A violation in one part of the country carries the same remedy as a violation in another part of the country. This is a tremendous boon for the plaintiff who otherwise may find himself briefing the law of many states to determine if the practice is illegal in each of them and what remedies apply in each state.

The plaintiff still has to determine if the federal remedy is adequate for all his class members. There may be one or more state statutes that provide greater relief than the federal statute.

STEP THREE: Are they doing it to a lot of people?

Another initial misstep is to assume that because something has happened once it must happen all the time. If an insurance company failed to include sales tax in its adjustment of a client's property damage claim, then it must mean that the company systematically excludes this element of damage from its estimates. Maybe, maybe not. It could be nothing other than an oversight on the part of a busy adjuster. A few calls to some other attorneys who handle insurance claims should give you a better grasp of the extent of the problem. If two or three of them have worksheets from the same company and all of them omit sales tax in the estimates, then you may have something.

How many people does it take to make a "class"? No one knows for sure how many people it takes for a case to become "numerous," but if you are wondering if your group is big enough, it probably is not. **Any class case worth pursuing will involve a class consisting of hundreds, if not thousands, of members.** If the defendant has a good challenge on numerosity, you are in big trouble. Class size bears directly on the overall potential recovery and, therefore, is an integral part of the cost analysis.

Someone reading this may say: "I have a hundred good claims against Defendant D. Should I bring my case as a class action and include all the claims in one action?" This probably reflects a fundamental misconception concerning the essence of class cases. If you have a number of "good" claims, claims worth pursuing on their own, against a particular defendant, you probably do not have a class case. You may have a "mass action" against the defendant if you can meet the procedural requirements, but this is a different legal animal from a class action.

On the other hand, class actions allow you to bring all your claims through one representative client. **This approach allows the strong claims to succeed and the marginal ones to survive.** In addition, you probably could not find all the

(Continued on page 10)

SUSTAINING MEMBER PROFILE

Paralegals Plus, Inc.

When a potential client called Paralegals Plus, seeking help to fill a paralegal position, Jerry Haden, CEO, asked the caller what prompted him to contact Paralegals Plus. He said, "I've heard that you are the **cream of the crop!**"

Paralegals Plus enjoys the reputation of being one of the best employment agencies serving the legal industry for over seventeen years. With offices in Dallas, Fort Worth, and San Antonio, Paralegals Plus is a full-service group providing attorneys, paralegals, legal secretaries, legal assistants, and support staff on a temporary or permanent basis to clients in the legal and corporate communities.

The company was founded in 1990 on the premise that legal professionals could be better served by others experienced in the legal field than by those who merely knew the staffing business. That premise applied equally to clients and candidates. With Paralegals Plus, clients could rely on a unique understanding of needs; they could place an order to fill a position without spending precious time conveying the intricacies of the legal culture. Candidates could feel confident that their skills and experience would be evaluated and understood, enabling them to make a smart career move.

That company tradition continues today - personified in the outstanding managers who lead the Paralegals Plus Divisions. The Dallas location is managed by Debra Lindsey Fortner, Vice President, who has over 25 years working in the legal industry. Fort Worth is led by Ann Dunkin, Vice President, a former Paralegal and law firm HR Administrator with over 30 years experience, and Irma Golden, Director of the San Antonio Division, has been with Paralegals Plus for over 11 years. The Paralegals Plus Team, including our temporary associates, is a group of highly qualified and experienced legal professionals who provide added value to our clients.

"The loyalty, tenure, and outstanding performance of our employees and associates speak very well for Paralegals Plus and our reputation in the industry" states Haden.

Along with noteworthy staffing and placement services, Paralegals Plus also provides clients with Legal Support Services, Training, and Executive Search; all a part of the commitment to exceed expectations of both clients and candidates. For more information about Paralegals Plus, Inc. please visit the company's website at **www.paralegalsplus.com**

(Continued from page 8)

claimants if you attempted to handle the cases individually.

The paradigmatic class case involves "negative value" claims, claims **not** worth pursuing on their own. To make a case involving small claims worthwhile, the class must include many people. "Many" equals more than ten or twenty, much more.

STEP FOUR: Does anyone care enough about the practice to want to end it?

The final prong of the test eliminates many cases that meet the other parts of the test. The example that comes to mind is one an attorney presented to us a few years ago. He had noticed that when he went shopping at a certain grocery store, the store did not zero its scales to account for the weight of the plastic bag that held his produce. We asked him if he had calculated how much this added to his bill and he said he thought each bag added about one cent.

If we apply the test, we find: 1. the store was doing it; 2. it was against the law; and 3. the store was doing it to a lot of people. Is it a good case?

No. Why? No one cares about paying a penny extra for a plastic bag for his apples. This is the sort of case that gives class actions a bad name. It sounds like a made up case. Customers do not have a problem with the practice. If you ever got the case to a jury, you would see them looking at the ceiling, their feet, or the clock on the back wall of the courtroom once they heard what the case involved. Do not bring a case like this unless you enjoy embarrassing yourself, throwing away your money, and wasting your time.

Often, bringing a class action against a defendant is like dropping an atomic bomb. You should not utilize it as a weapon in your arsenal unless it is the only way to correct a systemic problem.

To prevail in a class case, you have to be able to create significant risk for the defendant. You cannot create risk unless the heart of the case is something that people react to strongly, something that touches people where they live, and offends their innate sense of justice.

Stephen Woodfin of the Law Office of Stephen Woodfin has offices in Kilgore, Texas.

Technology and the Texas Judiciary

Julie Wade

> To maintain an able, honest, and enlightened judiciary should be the first object of every people."
> *President Sam Houston addressing the Sixth Congress of the Republic of Texas, November 1, 1841.*

This will be a four-part report briefly summarizing the impact technology is having on the Texas judiciary. Part 1, How We Make the Record, focuses on the official record of our proceedings, and courtroom technology available today. Part 2, The Texas Path to NIEM, will focus on the National Information Exchange Model, a project to be completed by October 31, 2007, that will develop and establish common standards for the sharing of information systems between our various state governmental and judicial agencies. Part 3 will focus on the Judicial Committee on Information Technology (JCIT), who they are, what they do, and the impact of their role that keeps our courts current with technology. Part 4 will focus on the Office of Court Administration (OCA), how they plan for all these changes thrust at them from JCIT and other agencies, and how they find the funds to do it all.

I hope that you will learn from this series, as I am learning, that we are looking ahead to a bright future of accessibility and ease of use that technology brings both to our workplace and the judiciary.

Part 1, How We Make the Record

The Official Transcript

A stenographic verbatim record of court proceedings is made in most Texas trial courts and Judges at the district court level and above appoint their own official court reporters. A person may not be appointed to be an official court reporter unless they are certified as a shorthand reporter by the Texas Supreme Court. (Sec. 52.021(a), Government Code.) A certified copy of the reporter's record is required for the filing of all civil appellate proceedings in the State of Texas. (Rule 35.3(b), Texas Rules of Appellate Procedure.) Depositions introduced into evidence at trial that are conducted in the State of Texas must be recorded by a certified shorthand reporter.[1] (*See* Ch. 52.021 of the Government Code, with the exception of depositions on written questions, depositions of persons who reside outside of Texas or outside the United States, or depositions of witnesses who are members of the United States Armed Forces, or are civilians employed by the Armed Forces, may be administered by notary publics, Sec. 20.001, CPRC.) (*See also*, Enrolled H.B. 1518 that becomes effective September 1, 2007, adding additional registration requirements to Sec. 52.001 of the Government Code relating to circumstances under which national court reporting firms, shorthand reporting firms, and affiliate offices are considered to provide services in this state.)

Who owns the official record is currently under review by the Senate Committee on Jurisprudence and is a hot issue of debate between the Texas Court Reporters Association (TCRA) and the proponents of the bill. The official transcript is currently the property of the official court reporter assigned to a Texas state court. If a transcript of a court proceeding is required, that person may apply in writing for a transcript of the evidence report-

ed by the official court reporter. The official court reporter shall furnish the transcript upon payment of the transcript fee or as provided by Rule 40(a)(3) or 53(j), Texas Rules of Appellate Procedure. (*See* Section 52.047(a), Texas Government Code.) Upon payment of the amount of the transcript fee or as provided by Rule 40(a)(3) or 53(j), Texas Rules of Appellate Procedure, the person requesting the transcript is entitled to an original and one copy of the transcript. (*See* Section 52.047(c), Texas Government Code.) The amount charged by an official court reporter for furnishing the transcript is set by the reporter. If a party objects to the fee, the judge will determine a reasonable fee taking into account the difficulty and technicality of the material transcribed, and any time constraints imposed by the requesting party. (*See* Section 52.047(b), Texas Government Code.)

Legislation is currently pending in the Senate Jurisprudence Committee (S.B. 179) that proposes to amend Sec. 52.047 of the Government Code to provide that the official transcript of court proceedings is the property of the court, not the court reporter. Anyone needing a transcript would apply for the transcript through the clerk who would provide notice to the court reporter. The Committee believes that the transcript should be treated as any other court document, and any fees associated with the preparation of the transcript should be received by the court. The court would require the clerk to preserve these documents for three years and to establish a reasonable transcription fee. (*See* Senate Committee on Jurisprudence Interim Report to the 80th Legislature, December 2006.)

There would be many benefits of transferring ownership of the official record to the court. Appellate Courts will benefit by having access to a complete electronic record. Fees would be uniformly set across the state for accessing the record for appellate purposes so attorneys and their clients would pay the clerk the same established rates for accessing transcripts. Courts would save money by having the electronic record stored on their servers in conjunction with their other electronic case files (pleadings and motions).

The Transcript

A. The CAT Transcript

If you have a criminal or civil trial in a state trial court in Texas today[2], or require that a deposition be conducted in this state, a court reporter will take down the verbatim record of the proceedings with the use of a steno machine which is equipped with a diskette drive. When a party orders a transcript of the proceeding, the reporter uploads the data from their diskette to a computer where CAT software (computer aided transcription) processes the keystrokes against the reporter's personal dictionary (just like the personal dictionary you build in Word) and translates them into English. The reporter will then read and edit the transcript, correct any mistakes, add proper names and terminology not contained in the dictionary, and add punctuation and formatting to the transcript. The final result is the official transcript.

B. The Realtime CART Transcript

Realtime reporting (*Computer Aided Realtime Translation,* "CART"), has been introduced with great enthusiasm here as well as throughout the country. Realtime basically evolved from the CAT software. Realtime provides an almost instantaneous text of the words spoken in the courtroom or at a deposition on your computer monitor via the Internet. Therefore, Realtime reporting combines the writing, translating and editing features of the CAT software into a single function. The court reporter no longer uploads the diskette into their own CAT software, the CART software provides the final product to anyone via an internet connection. Your client, witness or attorney can monitor the testimony reported in Realtime a few seconds after the words are spoken in the comfort of their office. The Americans With Disability Act also recognizes CART as an assistive software to aid the hearing impaired during official proceedings.

During a court proceeding, judges and attorneys benefit from Realtime reporting by having a trial transcript available to review each night. During the trial, the judge, attorneys and paralegals can review and note portions of the testimony within their copies of the Realtime feed on their own computers without interrupting the proceedings. Case management software such as LiveNote, Trial Director, CT Summation and Concordance can receive the Realtime feed and allow you to house the testimony with your other case information. LiveNote provides the ability to allow you to tag and key word search the live testimony. You can even write a note or text message during a live testimony and send it to the attorney conducting the proceeding in the courtroom or at the deposition with LiveNote's built-in Instant Messaging feature. (*Hi Jill, sorry your examination is going poorly, but hang in there, you can rehabilitate your witness tomorrow….*)

The next step for Realtime CART software will be to incorporate live video webcasting with the synched transcript of the testimony. To see an example of how webcasting is used in the courtroom today, check out the Supreme Court of Texas website. With the gracious assistance of St. Mary's University School of Law, the Supreme Court of Texas hosts live audio and video streaming webcasts of its oral arguments. Archives of oral arguments (from March 20, 2007 to the present) are available for downloading.

Stenographic Realtime reporting of certain proceedings, such as capital cases, could well be utilized throughout the state for the obvious reasons and benefits it would provide.

The Nonstenographic Record

Among the most prevalent trends occurring throughout the country in the judiciary today is a movement away from a stenographic record and the deployment of nonstenographic electronic recordings (digital audio and/or video) to preserve the record in certain proceedings. Texas law does not sanction or prohibit the use of electronic court recording equipment operated by a non-certified court reporter if performed according to rules adopted or approved by the Texas Supreme Court. (Sec. 52.021(e), Government Code.) The Texas Supreme Court has the authority to consent to the use of any method of court

reporting. (Sec. 52.021(c)(4), Government Code.) The Court has authorized the use of electronic court recording in certain jurisdictions through the approval of local rules. (TRCP 3a.) Texas employs stenographic, voice writing, audio and video recording methods to keep the official record.

Among the countless studies conducted on the issue of nonstenographic reporting, the National Center for State Courts (NCSC) queried the Court2Court listserv in May 2005 with the following question: "*A constituent is requesting information on the use of digital audio recording in court proceedings. Specifically, do you use digital audio recording for specific case types? If so, which ones?*" Twelve states responded, along with a representative for the federal courts. (*See Technology, Court Reporting, Digital Audio Recording and Case Type Memorandum*, May 19, 2005, NCSC). The responses reveal the use of digital audio recording as the official record in these states in all or certain case types. FTR (For the Record) is one type of software these courts use for digital audio recording. Other states, California and Florida, have recently amended their statutes to allow for nonstenographic reporting. Florida courts are on the cutting edge of utilizing electronic recording in their courts. (*See The Evolution of Electronic Court Reporting*, presented by the Ninth Judicial Circuit Court, Orange and Osceola Counties, Florida [www.ninja9.org].

How we make, maintain, deliver and store the official record of our court proceedings in Texas and access that record is no doubt undergoing a sea change. Both stenographic and nonstenographic recording methods will impact and improve how we make and distribute the official record in the future. In addition to the cost benefits, there are many other reasons to use digital video and audio recordings to maintain the record in certain proceedings. Digital recordings are portable, they can also be copied to CD or DVD, they can be conveyed as attachments to an e-mail message or downloaded over the web, and they can be played back on any device capable of playing CDs and DVDs, and when saved on the court's server, they can be played back on any PC connected to that LAN. When properly indexed, segments of a digital recording can be played back almost instantaneously.

Courtroom Technology

The Harris County courthouse is a fine example of what the Texas courtroom of the future can be. Through the superb work of Judge Ken Wise of the 152nd Judicial District Court, working together with the County's technology subcommittee (comprised of District Court judges, county court and probate court representatives), they have designed the most technologically advanced courthouse implementing sophisticated media presentation systems and advanced technological components available today. The new Harris County Courthouse should serve as a model for the future as we move to incorporate technology into the Texas judiciary. To see a video of the most technologically advanced courthouse in the world, visit You Tube. Part 1, *http://www.youtube.com/watch?v=xad-*

04Pqtog; and Part 2, *http://www.youtube.com/watch?v=AV_HIk6BSGQ.*

The JCIT and OCA published findings of their joint study conducted on the technology infrastructure and case management software used in Texas' trial courts and clerk's offices throughout the state. (*See JCIT and OCA Trial Court Survey 2001.*) Technology funding and training seems to be the primary concern gleaned from the report. This need apparently will be met as our courts take the steps to move toward national XML standards (*i.e.*, GIXDM/NIEM) for summary-level court reporting. The OCA reports in the Winter 2007 issue of *CourTex Judicial Branch News*, that it currently has two major requests for funding for projects. The Trial Court Technology project ($500,000) would enable it to fund case management software, collections software and Internet connectivity projects in local courts with JCIT's guidance. The Department of Information Resources (DIR) is in the process of issuing an RFO for a hosted court case management system. Also, the Texas Appeals Management and E-Filing System (TAMES) project ($3.5M) will bring e-filing and electronic document circulation into the appellate courts. Experts have also been consulted from the National Center for State Courts (NCSC) whose goal is to have all states comply with nationwide technology standards for statistical report exchanges.

In 2008, the Texas Office of Court Administration (OCA) will publish a special report ("Trends Report") focusing on significant trends and issues that have occurred in the judicial system over the past 20 years. I look forward to receiving their report.

Access to an open record

In conclusion, two further bills – S.B. 237 and H.B. 819, would direct the Supreme Court to develop rules for justice court e-filing. Issues being addressed include JP's internet access, e-filing and *pro-se* filings. This will bring us into an age of an efficient and cost-effective total electronic record. How nice it will be to go to a technologically advanced courtroom to hold your proceedings, and then be able to access the court's web page and not only download a brief or motion of interest to you, but download the deposition transcripts, the trial transcript and videos of the proceedings if taken, download any electronic exhibits you want, and pay one uniform price established state-wide to access all this information. A dream come true!

Julie Wade, Legal Assistant, ACED Harrison, Bettis, Staff, McFarland & Weems, LLP. Member, Publications Committee, Paralegal Division, State Bar of Texas

1. Although the Texas Rules of Civil Procedure provide that a notary public or anyone else upon stipulation of the parties and counsel can administer a deposition, the Office of the Attorney General of the State of Texas opined that Section 52.021 of the Government Code trumps the rule and thus only certified shorthand reporters can administer a deposition in the State of Texas. (*See* Opinion No. DM-308, Office of the Attorney General of the State of Texas, December 5, 1994.)
2. The federal courts are instituting electronic court reporting methods to record the record. The Bankruptcy Court employs audio recordings to record proceedings, and some District Courts audio record certain preliminary proceedings.

Last Minute Tax Tips

Craig Hackler, Financial Advisor, Raymond James Financial Services

Here's a potpourri of rules and ideas that are important for year-end planning.

Securities Sales To realize a gain or loss in 2007, the trade date must occur on or before December 31, 2007. Settlement date is irrelevant for publicly traded securities.

The limit on the deduction of capital losses in excess of capital gains is $3,000. Any net capital losses in excess of $3,000 are carried over into 2007. Both short- and long-term losses are counted on a dollar-for-dollar basis. A few years ago, long-term losses were worth only $.50 on the $1. No longer.

The holding period to achieve a long-term capital gain or loss is now more than twelve months. Count the period from trade date to trade date. Whether a gain is short- or long-term does make a difference. The date a long-term gain is realized also makes a difference. In general, net short-term gains are subject to a 35% maximum rate, while net long-term gains are taxed at a maximum of 15%. However, some gains may be subject to a 25 or 28% rate, such as gains on the sale of art or collectibles and gains on certain depreciated real property.

Retirement Plans If you are a calendar year taxpayer, the deadline for establishing a qualified retirement plan for deductions against 2007 income is December 31, 2007. The contribution need not be made until the tax filing deadline of the taxpayer's return. Note however, that a SEP plan can still be established for 2006 deductions up until the return due date in 2007.

In order for a distribution to qualify as a lump sum distribution, 100% of the balance to the credit of the employee must be distributed in one taxable year. If you have retired this year, make sure that you received (or will receive by year-end) everything you have coming under your former employer's qualified retirement plan.

Charitable Contributions Many people make their annual charitable contributions during the holidays. If you're going to make a cash contribution, mail the check by December 31, 2007 to qualify for a 2007 deduction. Giving a personal note or I.O.U. to the charity won't qualify for a deduction but donating with a credit card does.

Making gifts of securities is a very effective way to make charitable contributions. Charities are happy to receive odd lots. Donations of long-term capital gain property are deductible based on fair market value. It doesn't make sense to donate short-term capital gain property; your deduction will be limited to your basis. Also, it doesn't make sense to donate securities with losses; sell the stock and donate the cash. To claim a 2007 deduction, the security must actually be transferred to the charity before December 31, 2007.

Check in with your financial planner near the end of the year to see what deadlines and opportunities apply to your particular financial situation.

Social Security Numbers and Driver's License Numbers on Pleadings. In order to make it easier for title companies and others to determine the identity of judgment debtors on abstracts of judgment, SB 699 requires that each party's initial pleading in a civil action filed in a district court, county court or statutory county court include the last three digits of the party's drivers license number and the last three digits of the party's social security number. Proceedings in statutory probate courts are exempted from this requirement. Unfortunately, probate and guardianship cases in non-statutory probate court counties will be subject to the requirement. The requirement applies to civil actions filed on or after September 1, 2007.

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 512.894.0574 or 800.650.9517

The Top Ten Changes to the Bankruptcy Code Under The 2005 Bankruptcy Abuse and Consumer Protection Act

Edgar Borrego

On October 17, 2005, the majority of the provisions of the 2005 Bankruptcy Abuse and Consumer Protection Act (BAPCA) went into effect. Although this article attempts to explain the most relevant changes to the Bankruptcy Code, the most important thing to know about the new Code is that it still allows debtors who are suffering financial hardship to file bankruptcy. In other words, contrary to what some people think, bankruptcy is not dead. This being said, let's proceed to the top ten changes to the Code under BAPCA.

1. MEANS TEST: This is perhaps the most significant change in the practice of consumer bankruptcy. A debtor must undergo the means test if the debtor's current monthly income is greater than the median income for a family of the same size in the debtor's state. For example, in Texas the median income for a family of four is $59,369. Therefore, if the debtor's current monthly income multiplied times twelve is greater than $59,369, then the debtor must undergo the means test. In order to conduct the means test, you must first determine the debtor's "current monthly income." This is calculated by determining the debtor's average monthly income from all sources for the past six months prior to filing, not including income from Social Security. Once the current monthly income is determined, you subtract monthly expenses as specified under the National and Local Standards established by the IRS. You also subtract other expenses such as health insurance, expenses incurred to maintain the safety of the debtor, and costs incurred to provide care for an elderly, chronically ill or disabled member of the debtor's immediate family. There are other expenses allowed; however, listing all of them would exceed the scope of this article. Once you subtract the allowed expenses from the debtor's current monthly income, you get the debtor's net monthly income. If the debtor's net monthly income is $166.67 or more, then there is a presumption that Chapter 7 is an abuse and the debtor will be denied a discharge. The presumption of abuse may be rebutted by showing "special circumstances."

In my experience, very few debtors fail the means test. I believe there are two reasons for this. First, even under the old law, a debtor who had good income but unreasonable and excessive expenses would be denied a Chapter 7. Thus, the means test really does not change anything. Second, the debtor may live in a poor community where the median income is much less than our state's median income. Hence, the means test would not apply to the majority of the debtors in poor communities.

2. ELECTION OF EXEMPTIONS: You must use the exemptions of the state you have been domiciled in for the last two years. This was designed to prevent "rich" New Yorkers from moving to Texas or Florida, purchasing an expensive home, then filing for bankruptcy. When someone files for bankruptcy, they may choose either the exemptions provided for under the bankruptcy or exemptions under state law. In Texas, this basically means the exemptions found in the Property Code. Therefore, you must have lived in Texas for at least two years in order to exempt your homestead under Texas law. This new section can lead to some strange scenarios. For example, if someone moved from Idaho to Texas 18 months ago and files for bankruptcy here, we must use Idaho exemptions. Of course, I do not know Idaho exemptions nor am I licensed to practice Idaho law, yet I must attempt to advise my client under Idaho law.

3. TERMINATION OF AUTOMATIC STAY FOR REPEAT FILERS: The automatic stay terminates 30 days after filing if the debtor has had a previous case pending in the 12 months prior to filing. There is no automatic stay if the debtor has had two previous cases in the 12 months prior to filing. A debtor is permitted to petition the court to extend the automatic stay, but this must be done within 30 days of filing the petition. In order to continue the stay, the debtor must demonstrate that the case was filed in good faith as to the parties being stayed.

4. LIMITATION ON CRAM-DOWN: Under Chapter 13 law, a debtor must pay a secured creditor the value of their collateral, with interest. For example, if a debtor owes $15,000 on a car, but the value is only $13,500, the debtor must pay $13,500, with interest, to the creditor. However, under the new law, this may not be done for vehicles purchased 910 days prior to the filing of the petition. For other purchase money security interests, it is one year prior to filing. In our example, a debtor would have to pay all $15,000, plus interest, to the car lien holder if the car was purchased within 910 days prior to filing.

5. EASIER COLLECTION OF CHILD SUPPORT: The automatic stay does not prohibit child support creditors from col-

lecting a domestic support obligation (DSO) from property that is not property of the estate, from withholding income of the debtor for payment of a DSO, from withholding or suspending a driver's license, from reporting overdue support to a consumer reporting agency, from intercepting a tax refund, or from enforcing a medical obligation as specified under Title IV of the Social Security Act. Further, a debtor will not obtain discharge of a bankruptcy if child support is not paid.

6. PRE-PETITION COUNSELING: An individual may not be a debtor under the Bankruptcy Code unless such individual has, during the 180-day period preceding the date of filing of the petition, received from an approved nonprofit budget and credit counseling agency, an individual or group briefing that outlined the opportunities available for credit counseling and assisted such individual in performing a related budget analysis. A list of approved agencies is posed on the U.S. Trustee's website, www.usdoj.gov/ust/. This briefing may be conducted in person, over the telephone or via internet. Most of my clients conduct it over the phone. The cost to attend such counseling means there is less money available for the creditors. There have been rumors of this section being repealed, but it currently remains in full effect.

7. INCREASED TIME BETWEEN DISCHARGES: A debtor may not be granted a Chapter 7 discharge if (a) a discharge was granted in a Chapter 7 case commenced within eight years before the filing of the petition, or (b) a discharge was granted in a Chapter 13 case within six years before the filing of the petition, unless the previous Chapter 13 plan paid 100 percent of the allowed unsecured claims or it paid 70 percent of such claims and the plan was proposed in good faith and was the debtor's best effort.

A debtor may not be granted a Chapter 13 discharge if "the debtor has been granted a discharge in a case filed under Chapter 7 during the four year period preceding the date of the order for relief." I find this section extremely confusing. Does the four years start at the time the petition for Chapter 7 was filed, or when the discharge was granted? To date, Texas case law has been split on this issue.

8. REAFFIRMATION: Under the new law, there are new rules for reaffirming debts that require disclosures similar to those required by the Truth In Lending Act. Debtor's attorneys are required to certify that the debtor was fully informed of the reaffirmation terms, that the agreement to reaffirm is purely voluntary and the agreement does not impose an undue hardship on the debtor or a dependent of the debtor. Finally, the attorney must advise the debtor of the consequences should the debtor default under the terms of the reaffirmation agreement.

9. INCREASED DOCUMENT GATHERING: Perhaps the most burdensome part of the new Bankruptcy Code is the increase in the amount of document gathering and document preparation. Among other things, a debtor is now required to provide to the trustee copies of all payment advices received within 60 days before the date of filing. However, the debtor must provide to their attorney payment advices for the six months prior to filing. This is in order to calculate the debtor's current monthly income, remember? The debtor must also file a statement disclosing any anticipated increase in income or expenses in the 12 month period following the filing of the petition. A copy of the debtor's latest tax return must be provided to the trustee, a copy of the certificate from the approved credit counseling agency discussed in No. 6 above must be filed along with a copy of any debt repayment plan, and the debtor must file with the court a record of any interest the debtor has in an Education IRA. The debtor must also provide proof of insurance to any automobile lien holder or mortgage company. This is just the tip of the iceberg; other documents are required to be provided to the trustee and/or filed in court after the bankruptcy petition is filed.

10. A MORE RESTRICTED DISCHARGE: Under the new Bankruptcy

Code, a debtor may no longer discharge a student loan without showing undue hardship, regardless if the loan was insured or guaranteed by a governmental unit. There is a presumption of nondischargeability for debts owed to a single creditor for luxury goods or services obtained within 90 days of filing of the petition, or for cash advances of more than $750 obtained within 70 days prepetition. A debtor cannot discharge a debt for personal injury while operating a boat while under the influence, nor can the debtor discharge a debt obtained to pay a nondischargeable tax owed to a governmental unit. Also, the "superdischarge" for debts in Chapter 13 have been severely reduced. Finally, a debtor may not receive a Chapter 13 discharge if the debtor is not current on all post-petition domestic support obligations.

Edgar Borrego is a partner in the El Paso law firm of Tanzy & Borrego. He is certified by the Texas Board of Legal Specialization in Consumer Bankruptcy Law.

ET *al.* . . .

Mona Chandler Named to Inaugural LEAP Class

Northeast Texas Association of Paralegals member and NALA liaison Mona H. Chandler, *CP*, Daingerfield, has been named to the inaugural class of 15 paralegals from throughout the nation to participate in NALA's new Leadership Enhancement and Preparation (LEAP) program. The class had its first meeting during the 32nd annual NALA convention in July in New Orleans.

Michelle Erdmann, *ACP*, Chair of NALA's Professional Development Committee that conceived and developed the LEAP program, announced the class selection in June, stressing the important role these participants will play.

"Preparing future leaders is crucial to the success of our Association," she said. "These first LEAP participants will set precedents and tradition for the future of the program, the Association, and the paralegal profession. We envision the LEAP program as an ongoing part of NALA's mission to remain the leading paralegal association in the nation."

The class will be divided into smaller teams that will undertake research and reading assignments. There will be monthly Internet "Webinars" on subjects ranging from general information on the paralegal profession and the structure of NALA to specific leadership skills such as public speaking and association governance.

No program is scheduled for December, and May and June are to be devoted to team projects to demonstrate the participants' grasp of LEAP objectives. All groups will be doing a presentation at the 2008 convention. There is the possibility that one group (or more) will be chosen to do a presentation to the membership at the meeting.

There is no enrollment fee for the program, but participants have a significant time commitment and incidental costs associated with buying texts and attending the requisite annual convention meetings at the beginning and end of each "LEAP Year." Each participant who successfully completes the program will receive a *Certificate of Completion.*

Other members of this first class are: Patty H. Allred, ACP, Salt Lake City, UT; Amy Jo Clingan, CLA, Jacksonville, FL; Ruth S. Conley, CLA, Houston, TX: Julie M. Daniels, ACP, Wichita, KS; Ida Farhat, ACP, Lansing, MI; Kristine M. Hill, CLA, Pensacola, FL; Melissa M. Klimpel, ACP, Bismarck, ND; Susan Kay Lewis, CLA, Cheyenne, WY; Louise C. Mulderink, CP, Chattanooga, TN; Debra L. Overstreet, CP, Broken Arrow, OK; Kathleen M. Rosenstock, ACP, Glendale, CA; Lorena A. Shingleton, ACP, Charleston, WV; Melissa M. Wickerath, CLA, Ankeny, IA; and Joan E. Wiley, ACP, Las Vegas, NV.

More information about LEAP may be found on the NALA Web site at www.nala.org, or by contacting NALA Headquarters at 1516 S. Boston Avenue, Tulsa, OK 74119; (918) 583-5485.

PARALEGALS FLY TO IRELAND
April 26 – May 3, 2008
(Seven Days and Six Nights in Killarney and Dublin, Ireland)

Saturday, April 26
Departure from the United States

Sunday, April 27
Arrival in Shannon, Ireland. Travel through the Irish Country; visit Bunratty Castle and St. John's Castle in Limerick en route to Killarney. Take in your first views of the majestic countryside before checking into hotel. Welcome reception and Dinner at local restaurant.

Monday, April 28
See Irish scenery at its most stunning, including the Ring of Kerry with its rugged coastline, heather and beautiful Lough Leane. Dinner on your own.

Tuesday, April 29
Today hop on board a Jaunting Tour to Muckross House, a stately Victorian home with magnificent gardens and breathtaking views of surrounding lakes. Return to Killarney for Dinner and an evening of traditional Irish Storytelling.

Wednesday, April 30
Depart Killarney and journey to Dublin. Acquire Ireland's famous eloquence as you visit the Blarney Castle, where those that wish to gain the "gift of gab" can kiss the Blarney Stone. Travel to Waterford to visit the Waterford Crystal Factory. Continue to Dublin. Dinner on your own.

Thursday, May 01
Morning sightseeing tour of Dublin with a local guide, including entrances to St. Patrick's Cathedral and Trinity College, home to the Book of Kells (entrance for Book of Kells scheduled on Friday, May 2). Optional tour: Three (3) hours of CLE - 1:00 pm – 4:00 pm: Visit Four Courts to include meeting with a Barrister presenting information on the Courts; attending a Court sitting (depending on cases on in Four Courts that day); and a question and answer session with a Barrister following the tour. Dinner on your own.

Friday, May 02
Free day in Dublin for shopping or additional museum visits. Entrance to Trinity College to view the Book of Kells housed in the Old Library Building at the Trinity College Library. Group leader will provide travelers with information on "what to do in Dublin." Say farewell to the Emerald Isle with a special Irish Night including a group dinner and entertainment this evening.

Saturday, May 03
Transfer to airport for return flight to the United States

Fees: Departure from DFW and Houston is $3,164.00 (includes Departure tax and non-refundable Registration Fee of $300). The above is the cost to travel roundtrip from DFW and Houston. Department from Austin and San Antonio is $3,264.00 (includes Departure tax and non-refundable Registration Fee of $300). Upgraded insurance can be purchased: Comprehensive - $120 and Ultimate - $200; Over 66 – Comprehensive - $220 and Ultimate - $300 (insurance covers the entire eight days of travel). Tips for tour guide ($4 per day) and bus driver ($2 per day while using bus) is not included. Small contingency fee may be added in January 2008 for fuel surcharge. **Fees based on 20 persons. Airfare and Hotel (double room) with daily breakfast is included in price as well as all tours listed above.**

Payment Schedule: **Deadline for registration is November 1, 2007**; Initial deposit is $300; second payment of $300 is due 45 days following registration payment; balance due on January 27, 2008. **Sign up by October 15 and save $100.**

Register at www.ACIS.com, by selecting the **ENROLL NOW** tab on the top left above the logo on the home page, choose participants, and sign in using: Group Leader ID: 91260 Group Leader Last Name: Hackler

NOTE: Optional tour to FOUR COURTS to obtain three (3) hours of CLE on Thursday, May 1 in Dublin.

Scruples

How Do I Remain Ethical?

Ellen Lockwood, ACP, RP

Editor's Note: The following article is an excerpt from the *Paralegal Ethics Handbook*, which was written by the Paralegal Division and was published by West Legalworks, a Thomson business. For more information and to order copies, see full page ad on page 2 of this issue.

CHAPTER 2

HOW DO I REMAIN ETHICAL?

Overview

Paralegals must always take care to be sure they are not crossing any ethical lines. Paralegals must be familiar with the ethical guidelines for paralegals and attorneys and any rules and regulations specific to the state in which they are working. (See appendices.) Many paralegals inadvertently do something unethical because an attorney asked them to do it. The attorney may not be aware that what he is asking the paralegal to do is unethical. It is often the paralegal's responsibility to educate the attorney regarding the ethical limitations of a paralegal's duties.

Procedures to Determine Whether a Course of Action is Ethical

Answers to many ethics questions may be found in this book, including answers to common ethical questions later in this chapter. But when a paralegal is asked to do something unfamiliar, or which raises questions, he should consider the following:

Check the rules, if any, regarding what he is being asked to do. Rules will often specify who may do something, usually the attorney or the party. Even when the rules do not specify who may do something, it should be assumed the rules were written with the assumption that they apply to the attorney or party. Attorneys will sometimes assume that if a rule does not prohibit a non-attorney from doing something, then it is permissible for a non-attorney to do it. However, the absence of a prohibition does not imply permission for a non-attorney do something.

Paralegals do not have clients, attorneys do. (Freelance paralegals only have attorneys as clients.) The attorney-client relationship is based upon the relationship between the attorney and client, not the paralegal and client. If what the paralegal is being asked to do would be considered representation of the client before a judge, court, or agency, then it is likely something only an attorney may do. This includes signing pleadings (even by permission), certificates of service, or other legal documents and appearing on behalf of a client in a hearing, conference, mediation, or other proceeding.

Regarding billing and timekeeping matters, a paralegal should consider whether he would do it in front of a client. For example, if he would be reluctant to double bill, bill for more time than has elapsed, round up time, or other similar practices, then those actions are likely unethical and should be avoided.

Check ethics resources (see appendices) and ask respected paralegals their opinions.

If in doubt, a paralegal should inform his supervising attorney that he is not comfortable that it would be ethical to do what the attorney is asking and suggest the attorney or another attorney take care of the task until the paralegal can further investigate.

Remember: You are either ethical or you aren't. You can't pick and choose when to be ethical or which rules to follow. If a paralegal is frequently asked to do things he considers unethical, despite his efforts to educate his supervising attorney, perhaps he should consider finding a different job, one where ethics are valued.

After all, the most important aspect of your professional life is your reputation.

Common Ethics Questions

What is UPL?
UPL is the unauthorized practice of law and is a criminal offense. UPL includes giving legal advice, accepting cases or clients, setting fees, signing pleadings, appearing in a representative capacity in a court of law, holding oneself out as an attorney, or doing anything only a licensed attorney may do. Courts have generally prohibited UPL because of a perceived need to protect individuals and the public 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.

May a paralegal sign a pleading by permission?
Only an attorney or a party, if not represented by an attorney, may sign a pleading. The only person who may sign by permission for a licensed attorney is another licensed attorney. See F.R.C.P. 11(a). The signatures of attorneys or parties constitute a certificate by them that they have read the pleading and 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.

May a paralegal sign a certificate of service or certificate of mailing?
No, only an attorney may sign a certificate of service. The certificate by an attorney or party shall be prima facie evidence of the fact of service. The only person who may sign by permission for a licensed attorney is another licensed attorney.

What must be contained in a paralegal's signature block on correspondence?
A paralegal supervised by an attorney can sign letters on the law firm letterhead if the signature block contains the paralegal's name and title.

Is a paralegal obligated to correct someone's assumption that he is an attorney?
Yes. Not to correct this assumption could expose the paralegal to charges of UPL, which is a crime.

May I discuss interesting facts about a case with my friends or family?
Paralegals are obligated to preserve and protect the confidences and secrets of a client. Confidential information includes both privileged information and unprivileged information. Unprivileged information means all information relating to a client or furnished by the client acquired by the lawyer during the course of or by reason of the representation of the client. Unless it is public record, even the fact that the client has retained the lawyer should be considered confidential information. Thus, as tempting as it may be, it is best not to discuss anything concerning your lawyer's cases with friends or family.

If a paralegal is traveling for one client and works on another client's file while on the plane, may the paralegal bill both clients for that time?
No. This is referred to as double billing and is tantamount to stealing. If a paralegal uses part of the travel time to do another client's work, subtract that amount of time from the travel time billed to the first client. In other words, partition the time and charge each client for the time actually spent working on that client's file or while traveling in connection with business.

May a paralegal charge a client for work he did not perform even if someone else in the firm performed the work on the client's behalf but did not charge for it?
No. It is unethical to charge a client for work not performed by the person billing for the work, and it is tantamount to stealing. Only the person who performed the work on behalf of a client may charge for it.

What documents may a paralegal sign?
The general rules for paralegals are as follows:

A paralegal may sign correspondence, including e-mail correspondence, so long as no legal advice is given and the paralegal's name, title, and either the firm name or the name of his supervising attorney are included.

A paralegal may sign correspondence from an attorney by permission so long as the paralegal's title is clearly indicated and the letter does not contain legal advice or agreements. If the letter contains legal advice or agreements, the attorney should sign or have another attorney sign by permission. A paralegal is not allowed to sign legal agreements, pleadings, or certificates of service.

May I make an agreement with opposing counsel on behalf of my attorney?
Yes, but only in certain instances. If an attorney requests a paralegal contact opposing counsel for scheduling purposes, the paralegal may make an agreement as to dates and locations. If the attorney asks a

paralegal to contact opposing counsel to obtain an extension of time in which to object and respond to discovery requests, the paralegal may obtain that agreement on his behalf. Keep in mind that any agreements between attorneys or parties touching on a pending suit must be in writing and, in many jurisdictions, filed with the court in order to be enforced. Thus, the letter will bear the signature block of, and be signed by, your attorney and not by the paralegal, even with permission.

Responsibilities that require the competent professional judgment of the lawyer cannot be delegated. Permitting a non-lawyer employee to prepare and sign correspondence that threatens legal action or provides legal advice or both creates the appearance that the lawyer is not exercising his or her legal knowledge and professional judgment in the matter.

When may a paralegal accept a referral fee from an attorney?
Under no circumstances may a paralegal, or anyone who is not a licensed attorney, accept a referral fee from an attorney. Receipt of and making these payments may even be considered a felony.

When may a paralegal solicit clients?
A paralegal may not solicit legal business, either for himself or for an attorney. This is not to say that freelance paralegals may not solicit attorney clients; they just cannot solicit non-attorney clients for whom they provide direct legal services.

When may I use an attorney signature stamp?
Keep in mind that this is a stamp of the attorney's signature, not just the attorney's name, so using an attorney signature stamp is the equivalent of a paralegal signing the attorney's name by permission. For letters that do not include legal advice or that deal with some administrative matters, using a stamp is probably fine. However, using an attorney stamp on pleadings, engagement letters, settlement offers and documents, and correspondence that includes legal advice and particular court documents is never appropriate. If there is any doubt as to the use of an attorney signature stamp, insist that the attorney sign the document.

May paralegals negotiate settlement agreements?
Attorneys are required to provide competent and diligent representation to a client. Offers and counter-offers that constitute realistic bargaining for settlement, the judgment of the defendant's attorney as to when and how much should be offered, and of the plaintiff's attorney as to the adequacy of the offer, is itself a measure of competence. The client is entitled to this full measure of competence from his attorney in the bargaining process and to the benefit of his attorney's analysis and recommendation concerning all offers of settlement. After the full disclosure and recommendation from the attorney, the burden of decision then shifts to the client. Therefore, it would seem that paralegals are precluded from negotiating settlement agreements. Paralegals may deliver settlement offers, as well as responses to settlement offers, on behalf of their supervising attorneys.

What is an ethical wall and what is it used for?
An ethical wall is a device by which a law firm helps to preserve and protect the confidences and secrets of a client and avoid conflicts of interest pertaining to a client. Paralegals are not in a position to determine whether a potential conflict is of concern and should let their supervising attorneys make that determination. Freelance and contract paralegals have a particular responsibility to keep up with the cases on which they have worked and the parties and attorneys involved to avoid possible disqualification of an attorney for whom they may work in the future. In any event, a paralegal is obligated to inform the supervising attorney of the existence of any possible conflict.

When a firm hires a paralegal who formerly worked for opposing counsel or an opposing client, the entire firm should be notified that an ethical wall is to be erected around the paralegal and that no one may: (1) discuss the case in the presence of the paralegal; (2) allow the paralegal access to any documents, including keeping files locked away from any cabinets to which the paralegal would normally have access; and (3) engage in any discussions with the paralegal about prior work on the case or work his or her previous firm may have done. These precautions are necessary to avoid the firm's possible disqualification in the case.

What is my duty with respect to reporting UPL or other fraudulent activities once I become aware of them?
Once a paralegal becomes aware of UPL or other fraudulent activities, there is a duty to report such behavior to the appropriate authorities. To do otherwise is to knowingly assist in the behavior. Paralegals should report ethics violations up the chain of command in the firm or company for which they work.

Should paralegals identify themselves at the conclusion of a letter and/or fax if it is sent by them at the attorney's request?
Paralegals must always identify themselves by name and title on any business correspondence they send. This includes email, faxes (and fax cover sheets), as well as regular hard copy letters or documents. It matters not to whom the letter is addressed or by whom it was requested; if it is business correspondence or documentation on which the paralegal's name appears, the paralegal's title must also be included. This applies to business cards and letterhead on which the paralegal's name appears.

May a paralegal offer paralegal services such as drafting and filing documents to the public?
The majority of states prohibit offering paralegal services directly to the public. Paralegals should check their state laws carefully as those that do allow paralegals to offer services to the public have strict regulations. If such businesses are not permitted in a particular state, paralegals may not offer services of any kind directly to the public.

The 2007 Annual Meeting of the Paralegal Division of the State Bar of Texas

The 2007 Annual Meeting of the Paralegal Division of the State Bar of Texas was held at the Henry B. Gonzalez Convention Center on June 22, 2007. Located in beautiful downtown San Antonio, this location provided an excellent venue which allowed all attendees to enjoy the well-known Riverwalk as well as have plenty of choices for extra curricular activities.

Paralegals from around the State initially gathered for the Paralegal Division Annual Meeting where the "State of the Division" was presented by Javan Johnson, outgoing President of the Paralegal Division. Javan was also given a special recognition for her leadership, guidance, and contributions as President for the second time in the Division's 25-year history. The outgoing Board of Directors was recognized and thanked for their year's service, and the new Paralegal Division officers and directors, under the leadership of Patti Giuliano as incoming President, were sworn in for their upcoming year of service.

The day continued with Continuing Legal Education offered by a stellar group of legal professionals on a wide range of topics. Both attorneys and paralegals attended each presentation and actively participated in the very informative and enlightening discussions.

Susan Wilen

The four presenters included Judge Xavier Rodriguez, a U.S. District Court Judge of the Western District of Texas speaking on "What Federal Judges Want You to Know About Presenting Your Case". James J. Kizziar, a partner in the San Antonio office of Bracewell & Giuliani, discussed "Better Billing Practices" for attorneys and paralegals. David Henry, a registered Patent attorney in the United States and Canada, an active Intellectual Property litigator, and a Professor of Patent Law at the Baylor School of Law, spoke to the "Myths and Traps of Intellectual Property". Finally, Ty Griesenbeck, managing partner of the San Antonio firm of Plunkett & Gibson, spoke to "Minimizing Client Complaints (And Hopefully Malpractice Claims)". Each of our speakers kept the crowd's attention, provided very useful tips that can be used in our every day practice, and even managed to lighten up the day with a few laughs.

Javan Johnson (left) and Cecile Wiginton(right)

The success of this event was all made possible by the sponsorship of the following vendors and organizations:

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As we all know, without the help and generosity of these organizations the Division would not be able to offer such great CLE to its members. Please make every effort to acknowledge these sponsors and thank them for their support.

Thanks for your Support!!!

The Division would like to say a big THANK YOU to our wonderful vendors, who sponsored the Division at the 2007 Annual Meeting, several of which continue to support the Division throughout the year. All of the snacks, drinks, and handouts were very much appreciated and enjoyed by all. Without the donation of their time and effort, the Division would not be able to put on such great CLE events. Please continue to support them.

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Back Row: Charie Turner, Cheryl Bryan, Mona Chandler, Misti Janes, Kristy Ritchie, Billy Hart, Debbie Guerra, Deborah Hathaway, Michele Rayburn, Deirdre Trotter, Kimberly Hennessy. Front Row: Stephanie Hawkes, Robert Soliz, Patricia Giuliano, Rhonda Brashears, Clara Buckland

Patricia J. Giuliano
President

Patti is your new President. She has gained a lot of experience serving PD since becoming a member in 2001. First, in 2003 she co-chaired the Socials Sub-Committee of the LAU (now TAPS) Planning Committee, and then served as Co-Chair of the Annual Meeting Planning Committee in 2004. Subsequent to the Annual Meeting she was elected to serve as director of District 5.

In addition to working with the Division, Patti has also been active on the Board for the Alamo Area Professional Legal Assistants, Inc. having served as the Professional Development Director in 2002-03, and was elected Treasurer for the 2003-04 Board year.

In addition to her paralegal organization affiliations Patti also serves as the Volunteer Coordinator for the San Antonio Bar Association's Community Justice Program, and has served on the San Antonio Bar Foundation's Courthouse Fun Run Committee since 2001.

Professionally speaking, Patti is an intellectual property paralegal with Cox Smith Matthews Incorporated, and has over nine years experience working in this field of law. Prior to her IP days, she worked in medical malpractice defense and practiced in corporate and estate planning law as well. All told, she has worked in the legal field for over 20 years.

Patti is married to Steve Giuliano and they have two great kids and one beautiful granddaughter. Having traveled throughout the United States as a military wife (now retired), she has been fortunate enough to gain experience with the legal process outside the state of Texas in such places as California, Indiana, and Ohio. She attended Indiana University in Bloomington, Indiana, and received her degree in paralegal studies from the ABA-approved program at Sinclair Community College in Dayton, Ohio.

Rhonda J. Brashears, CP
President-Elect

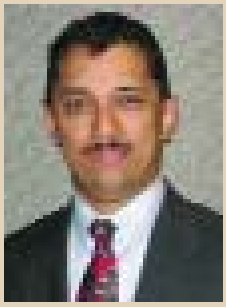
Rhonda is a paralegal in the firm of Underwood, Wilson, Berry, Stein & Johnson, P.C., Amarillo, Texas, and has been in the legal profession for 21 years. She specializes in personal injury and civil trial defense law. She received her B.G.S. degree from West Texas A&M University in 1998, her CLA designation in 1996, and was board certified by the Texas Board of Legal Specialization in Personal Injury Trial Law in 1998.

Rhonda has been a member of the Paralegal Division since 1990, and has served as Director of District 7, 1996 until 2001, Secretary, 1999 to 2001, and was President of the Division in 2002. She has also served on various committees throughout the years. Rhonda is also a member of the Texas Panhandle

Association of Paralegals, where she served as President, President-Elect, Treasurer and NALA Liaison.

Rhonda is a part-time instructor at Amarillo College, teaching paralegal classes in their Paralegal Studies program and serves as the Chair of the Advisory Committee for Amarillo College's Paralegal Studies program. Rhonda has been married to her husband Rod for 14 years and they have two children, Cody and Caitlyn.

Robert Solis
Parliamentarian



Robert is a paralegal at the Victoria firm of Cole, Cole & Easley, P.C. where he has worked for the past six years, mainly under the supervision of Rex L. Easley, Jr. and Paul A. Romano.

Robert assists in all phases of the firm's personal injury docket, including product defects, premise liability, auto accidents, trucking accidents, oilfield accidents, construction accidents, and wrongful death cases, as well as the firm's general civil litigation, probate litigation and maritime law practice. Prior to joining Cole, Cole and Easley, Robert assisted in other areas of law including appellate, bankruptcy (debtor and creditor), insurance defense, employment and family law in his 15-year career.

Robert is currently obtaining his associate's degree in web page design and will earn a bachelor's degree in networking and troubleshooting, hoping to specialize in computer graphic animation for accident and injury reconstruction. He has been a member of the Division since 1996 and has been the District 8 Director from 2004 to present. He was President and is now Treasurer of his local legal association, Crossroads Legal Association. Robert became a Board Certified Paralegal in Personal Injury Trial Law through the Texas Board of Legal Specialization in 2006.

When Robert is not working at the law firm, he is very active in other civic and community organizations. He is a member of the Victoria Northside Rotary (Director 2003-2006 and Lane Chair in 2003), Victoria USBC Association (formally Victoria YABA) as past President, Vice-President and is currently a Director. In addition, Robert coaches approximately 20 to 30 youth bowlers ranging from 5 to 22 years of age and his family hosts foreign exchange students through the school year. Robert's family has hosted more than 30 students from Germany, Norway, Brazil, Finland, Sweden, England, and Italy in the past 9 years. Robert is also a member of the Association of Trial Lawyers of America (ATLA), the College of the State Bar of Texas, and the American Bar Association. Robert and his wife Leslie have been married for 17 years and they have two children—son, Mackenzie, age 13 and daughter, Devon, age 10.

Clara Buckland, CP
Secretary

Clara is a Certified Paralegal with the law firm of Kemp Smith LLP, in El Paso, Texas. She has worked in the firm's specialty area of Labor and Employment Law for nearly 13 years. She enjoys the discipline of self study in the theories of Management and Change Management. Clara serves the Paralegal Division as District 16 Director. At a time when she was indecisive about her career path, Clara went to work in the area of Family Law in 1988, and it was then that she discovered the paralegal profession and loved it. Clara would like to acknowledge the professionals in her life who were instrumental to her success as a paralegal—her current boss and mentor, Michael D. McQueen, and her former boss and mentor, Judge Kathleen C. Anderson.

Clara received her A.A.S. in Paralegal Studies from the El Paso Community College and now serves on the college's Advisory Committee for the Paralegal Program. Clara is a member of the El Paso Paralegal Association and has served on that organization's board in various capacities, including President in 2003, the same year she received the Paralegal of the Year Award.

Clara is married to Mark and they have two lovely daughters, Jazmine and Olivia. In addition, Clara has been blessed with two beautiful grandchildren, Jason and Maddie.

Stephanie Hawkes, RP
Treasurer

Stephanie serves as Treasurer of the Paralegal Division in the second year of a two year term as District 2 Director.

Stephanie is a Senior Paralegal at Nissan North America, working in the areas of automotive finance Compliance, Privacy and Licensing.

Stephanie is a graduate of the University of Texas at Austin and the Lawyers Assistant Program at Southwest Texas State University. In 1999, she obtained her Registered Paralegal certification from the National Federation of Paralegal Associations.

Throughout her career, Stephanie has been active in professional development of paralegals. She has served in various positions on several planning committees for the Texas Advanced Paralegal Seminar and Co-Chaired the Annual Meeting Committee in 2005. She previously served on the Board of the Dallas Area Paralegal Association. In 2000, she was awarded the "Volunteer of the Year" award and in 2001 was designated "Paralegal of the Year".

2007 EXCEPTIONAL PRO BONO AWARD RECIPIENT

Jena Parker, CP, Fort Worth, winner of this year's Paralegal Division Exceptional Pro Bono Award, is a most deserving paralegal volunteer for the Paralegal Division of the State Bar of Texas.

Jena, and her attorney, Michael Ware, work as volunteers in conjunction with the Texas Innocence Project based out of Houston. Mr. Ware is the director of the North Texas Innocence Project. In some cases, death row inmates have exhausted all appeals, but still claim they are innocent. Since technology has improved over time, such as DNA analysis, one can learn information about crimes that would have been unknowable 15-years ago.

Inmates will send requests for help to the Texas Innocence Project. In a case where an inmate might be able to prove his innocence, his case is assigned to an Innocence Project ("IP") at a law school in Houston, Lubbock, Austin or in Fort Worth, at Texas Wesleyan Law School. There are several law schools working on the Innocence Project. They are (i) University of Houston, (ii) St. Thomas, (iii) University of Texas at Austin and at Arlington, (iv) Texas Tech, (v) University of North Texas, and (vi) Texas Wesleyan. Jena's attorney is an adjunct professor at Texas Wesleyan Law School, and directs the Innocence Project law students in investigating the inmates' claims.

Recently, they had a client who spent 18-years in prison for sexual assault, based on eyewitness identification. The victim spent 6-hours with the perpetrator, but still identified the IP as the rapist. He was proven innocent after a DNA test confirmed that he was not the rapist.

Most of the Innocence Project cases that Jena and her attorney look into are for murders or sexual assault, but they will be including arson convictions in the near future. As per protocol, when they receive a letter from an inmate who claims actual innocence, they will write the inmate to let them know they received the letter and

Javan Johnson (left) abd Jena Parker (right).

have forwarded his letter to Texas Tech for the initial screening process. Jena and her attorney have processed approximately 300 letters from their office alone. The Texas Tech Innocence Project will send a questionnaire to the inmate to be returned to Texas Tech. After the completed questionnaire is received, it is determined whether DNA testing can be conducted and/or whether the prisoner was convicted based on an eye-witness identification.

Cases needing more investigation will be sent to Jena's office for further attention if it is in the Dallas/Fort Worth area and/or surrounding counties. Jena will log these cases in and she will take the basic information to Weslayan Innocence Project ("WIP") for further research and investigation. WIP usually are set up in 4 teams of students. WIP currently has approximately 30 students involved in the Innocence Project. One or two cases are assigned to each team.

Jena will show a team how to find the trial court cause number, the court it is in, county, appeals court number, etc. for the purpose of locating the court record. Most of these cases are from 10 to 25 years old and are in storage at the courts. Once Jena receives the information, Jena will call the appeals court and order the transcript of the trial and the clerk's record. Jena will then also call the original trial court to order the clerk's record from them since some of the information is not in the appeal's record. Sometimes Jena has a very hard time getting the record as these cases are so old the courts have a hard time locating them. After receiving the transcript and record, Jena and Mr. Ware will give these documents to the team so they can begin reviewing the transcript. Jena and Mr. Ware will meet with each team 4-times a week. They discuss what has been found in the record, i.e., witnesses and/or any DNA. The cases without any DNA are much more difficult to prove their innocence.

After investigation by the students, it is decided whether the IP can continue pursuing the case. Some of the questions asked are: (i) any witnesses that can be interviewed, (ii) any DNA that can be tested, and (iii) can the evidence used at trial be located? If witnesses or inmates need to be located and interviewed, Jena will show the students how to locate them. This is not an easy task as sometimes there is not much information to go on especially if they do not have a date of birth, and also some of these cases are so old that witnesses are no longer alive. If an inmate needs to be interviewed, Jena will show the students how to find where an inmate is located. Then Jena will send the appropriate paperwork to the Texas Department of Criminal Justice ("TDCJ")—Access to Courts for approval so that the students can visit the inmate. Once Jena receives the approval from TDCJ, Jena then contacts the prisons and get the students approved for visitation at the prison.

When a new exoneree is released especially out of Dallas County (of which there have been 13 so far), Jena coordinates with Barry Scheck, Innocence Project in New York, to make sure we have as many

exonerees present as we can when the new exoneree is released. If she needs to pick them up or make arrangements so that they can be picked up, Jena will arrange this. Jena also makes lunch arrangements for the exoneree and their families, attorneys, and law students to celebrate their release.

Jena will also try to help the exonerees find jobs as most of them have no luck in finding jobs. Even though they are innocent, employers are still not hiring them.

Jena admits that when Mr. Ware started this effort pro bono, she thought that she had a lot of work to do already and she didn't know where she'd find the time for a lot of extra work. Jena conservatively estimates that she has spent in excess of 700-hours in 2006 working on the Innocence Project. Jena says that to see the look of an exoneree makes what she does all worth it. Jena is amazed at how many people are still in prison that actually could be innocent. Greg Wallis who spent 19-years in prison said to Jena when he got out that his mother always knew he was innocent, but she died before it was actually proven. Jena thinks of her children and the children of these innocent men who went into the penitentiary when their children were young, and are now getting out when their children are adults. They missed their children's entire lives. Whatever Jena does for the Innocence Project, she just wishes she could do more.

Jena was also the coordinator for 2006 between Texas Law Schools and the Texas Defense Lawyers Association for the First Annual Innocence Project Coference held in Austin, Texas. Jena also coordinated the appearance of some of the exonerees at this conference.

Jena also is a Red Cross volunteer. She is on-call once a month usually for a 24-hour period. When a family has a fire in the county area, the team leader for the Red Cross will call Jena to meet her at the fire location. It can be at an apartment where several families are displaced or at a home. The Red Cross makes sure these individuals have their basic needs which are shoes, clothes and shelter. Jena will go through the burned area after the fireman in charge gives his OK. Jena will check to see if the food, clothes, and bedding are ruined. If they are, then the Red Cross gives the family an allotment for that. If it is an apartment fire that has affected several families, it could take several hours for Jena to complete all her necessary duties, including paperwork, etc.

Jena is a member of Fort Worth Paralegal Association ("FWPA"), where she has served as President, President Elect/Education, First Vice President/Programs, and Parliamentarian. Jena is a member of the Paralegal Division, where she currently serves as the Chair of Ad-Hoc Committee on College of the State Bar Paralegal Application Review for CLE. Jena is also a member of the College of the State Bar of Texas—Paralegal Division.

Some publications to Jena's credit include *West's Paralegal Today* "Questions Answered by a Criminal Law paralegal", to be published in 2007, and *Lessons from the Top Paralegal Experts: The 15 Most Successful Paralegals in America and What You Can Learn From Them* —"Questions" by a Criminal Law Paralegal to be featured in the Compendium to be released in July 2007.

Jena is a NALA Certified Paralegal and works in Fort Worth, Texas, as a paralegal for the Law Offices of Michael Ware.

Opinions TO THE EDITOR

The TPJ wants to hear from you! The Publications Committee will poll members concerning their thoughts on some of the "hot topics" of the day. During each quarter, the Committee will draft a question, which will be distributed to membership, through the Directors. Each question will direct you as to where to send your response. We will print the responses in the following TPJ, reserving the right to edit for space considerations. While we prefer to print a name and city with each response, we understand that some of you may prefer that we not print your name. We will honor this request, so long as the response is not contrary to the objectives of the Paralegal Division or the Publications Committee. We hope that this column provides a way for PD members to express themselves, constructively, on issues that impact our profession, our communities, and our country.

Question of the Quarter:

House Bill 8/Senate Bill 5 – also known as "Jessica's Law" (after Jessica Lunsford) – was signed into law by Governor Rick Perry on June 15, 2007, and will take effect on September 1. One section of the new law makes a second conviction of a felony sexual assault against a child a capital offense, making those convicted eligible for the death penalty or life in prison without parole. Among other concerns, some legal scholars have expressed an opinion on the constitutionality of such a penalty as disproportionate to the crime. (See http://www.baylor.edu/pr/bitn/news.php?action=story&story=45126)

Do you believe this law violates 8th Amendment rights?

RESPONSE : To me, there is nothing more cruel and unusual than allowing multiple children to be the victim of felony sexual assault by a repeat perpetrator. I am in support of the new law making this a capital offense. I believe the children of Texas will be safer because of it.

—Jill Moericke, Denton

RESPONSE: ABSOLUTELY NOT! If a person receives a SECOND conviction of a

felony sexual assault against a child, they obviously did not learn the first time and deserve no further chances from the State. Sadly, there are too many children being sexually assaulted and the grim reality is that these sexual predators deserve no second chances. I am sure there are a lot of readers of this journal that are survivors of sexual abuse and have been changed forever. The Constitution is to protect everyone, including children, and it the child's rights being violated by the sexual predator, not the other way around. If a convicted felon has been released from his/her original sentence and violates again, this should make it pretty obvious that they are a continuing threat to the children of our society. I sincerely hope and pray these "legal scholars" stop looking through their rose-colored glasses and see these repeat offenders/predators for what they are. A second conviction SHOULD be a capital offense; nothing less.

—Audrey L. Moore, CP, The Woodlands

RESPONSE: I believe crimes against children, especially those of a sexual nature, to be particularly heinous. It is my belief that rehabilitation of sexual predators is extremely difficult. So with sufficient evidence and multiple convictions, "YES", I would be in favor of life imprisonment or the death penalty for those committing crimes against children.

—Ava Watson, Denton

RESPONSE : I believe House Bill 8/Senate Bill 5 is a good law. The punishment fits the crime.

—Marla G. Mitchell, CLA, Unknown

RESPONSE : Since I am with the District Attorney's Office and prosecute these kind of cases, my vote is that I do not, as a general rule, feel this violates a Defendant's rights. We're big on victim's rights here and if the crime fits, the punishment should too.

—Kay Sparks, San Angelo

RESPONSE : No, I do not believe that the Jessica's Law enacted recently in Texas is a violation of the 8th Amendment. When it comes to a minor child, any felony crime against that child should have the strictest punishment allowed by law. History proves more times than not, that the perpetrator will strike again if allowed to be set free. It is time that we punish those criminals that take away the innocence of our young children who are unable to defend themselves. I commend the lawmakers for making this law in Texas and fully agree with it. If that child that was violated and dies as the result of the act, would they say that the punishment was cruel and unusual punishment? I dare say that many of them if they were alive to give their opinion, they would agree with the punishment. If that child lives through an attack, then he/she is usually scarred in some way for the rest of their lives.

—Linda Valerius, College Station

RESPONSE : No.

—Diane M. Reed, Austin

RESPONSE: To Whom It May Concern: I do not believe Jessica's Law falls in the category of cruel and unusual punishment.

I fully support Jessica's Law – Furthermore, I believe they should castrate first time offenders!

—Beverly Prewitt, Unknown

RESPONSE: Sexual predators can not be rehabilitated.

If he's done it once, he'll do it again and again, until he's caught.

If one has been convicted of this crime, one knows quite well that it's very wrong.

The only way to stop the perpetrator is strict enforcement of strict laws, regardless of whether or not the predator is a family member or not.

More than likely it is because many predators are family members—uncles, grandfathers, cousins, etc.

This does not give anyone special rights.

As a matter of fact, it should be the cause of more severe punishment as a family member is supposed to protect the innocent children, not harm them, particularly in such a cruel and devastating manner.

I believe the death penalty will curb the number of repeat offenders in this state, and therefore, prevent many innocent children from being sexually molested. It is a clear message to child molesters that this behavior will not be tolerated in Texas!

—Francine Fleming, Unknown

RESPONSE: Only an ivory-tower scholar would consider the death penalty as being "disproportionate to the crime" of repeated child molestation. Texas applies the death penalty for multiple murder. When a child is molested, her body may recover and continue to live, but the spirit of that child has been murdered just as effectively as if the perpetrator had cut out her heart. I agree with AG Abbott that the child molester is unlikely to consider the ramifications of his act (his own death being the least of them, in my opinion), and it is absolutely essential that we stop these monsters from attacking our children.

—Sandy Sawyer, Austin

RESPONSE: I do not believe this law violates 8th Amendment rights? [sic]

—Ryan Wimble, Austin

RESPONSE: I believe that a second conviction of a felony sexual assault against a child should be a capital offense, making those convicted eligible for the death penalty or life in prison without parole.

—Susan Grim, Amarillo

RESPONSE: No, I do not believe this law violates the 8th Amendment rights…if the person has committed this act 2 times that is known; absolutely not! The person has set a pattern that will continue!

—Sheila Lazzara, Dallas

RESPONSE: Regarding Jessica's Law – I think it sounds like a good law and is a punishment that fits the crime. People who mess with children are just plain evil and maybe that law would discourage more sex offenders. I sound harsh, but the impact of a sex offense against a child can be irreparable.

—Debbie Montgomery, CP, Dallas

RESPONSE: No.

NOTARY RULE CHANGES

The Office of the Secretary of State adopted a new rule effective April 22, 2007. The rule prohibits recording of personal information in a notary public's record book. The rule change is an effort to prevent identity theft and states that Texas Notaries Public are forbidden from recording any identification numbers assigned to a signer, grantor or maker, by a governmental agency or by the United States. This includes a driver's license number, passport or any other number that could be used to identify the signer, grantor or maker of the document. As a result of this rule change, all First American direct operations, fee attorneys, and wholly owned subsidiary personnel are instructed to cease including this type of information in their notary public record book.

Please review the document below for additional information about this important change to the Notary Public rules.

TITLE 1. ADMINISTRATION

Part 4. OFFICE OF THE SECRETARY OF STATE

Chapter 87. NOTARY PUBLIC

Subchapter E. NOTARY RECORDS

1 TAC 687.60

The Office of the Secretary of State adopts a new rule prohibiting the recording of personal information in a notary public's record book. The amendment is adopted without changes to the proposed text as published in the February 23, 2007, issue of the Texas Register (32 TexReg 687). The purpose of the new rule is to prevent identity theft using information obtained from a notary's record book.

Section 406.014(a)(5) of the Texas Government Code requires a notary public other than a court clerk notarizing instruments for the court to keep in a book a record of whether the signer, grantor, or maker of a document is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker.

Section 406.014(a)(5) does not require that the personal information on the identification card be recorded in the notary's book. However, notaries public have recorded information, such as the driver's license number, in their notary record books. Section 6406.014(c) specifies that "a notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy." If such copy contains personal identification information, that information could be used to facilitate the theft of a person's identity. The new rule will prohibit the recording of the personal identifying information contained on the identification card and would help thwart identity theft.

No comments were received regarding the proposed new rule.

The rule is adopted under the Texas Government Code, 6406.023(a) and 62001.004(1), which provide the Secretary of State with the authority to prescribe and adopt rules. The rule affects

6406.014 of the Government Code. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 2, 2007.

TRD-200701277
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: April 22, 2007
Proposal publication date: February 23, 2007
For further information, please call: (512) 475-0775

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