

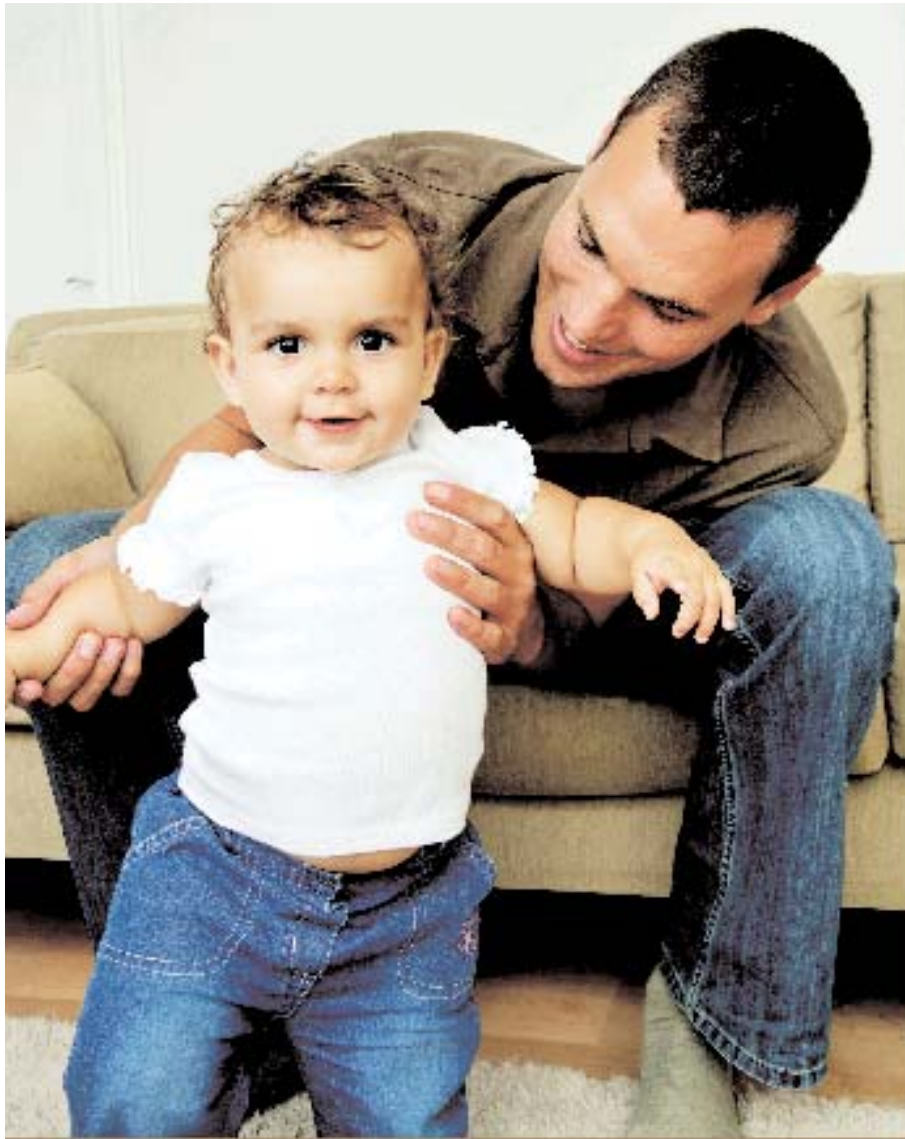
WINTER 2007 VOL. 13 NO. 3

TPIJ

Texas Paralegal Journal



**SOX 806
Whistleblowers**



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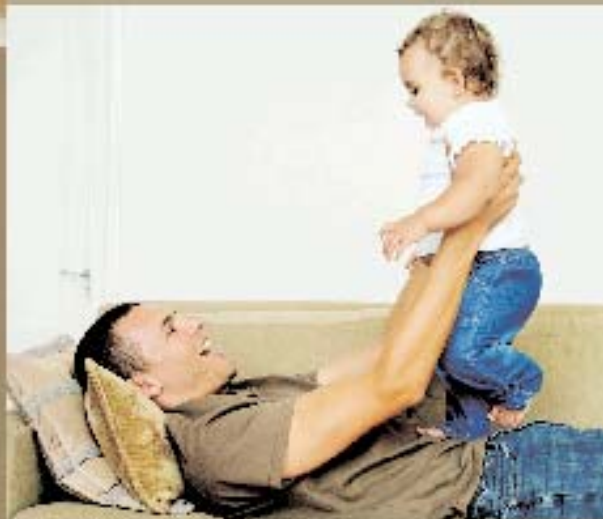
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PRESIDENT'S *Message*

Patricia J. Giuliano

Have you ever wondered why we all tend to look at things with more introspection during this time of the year? I'm not sure why that is because we all experience small miracles and enjoy numerous blessings every day.

We all know there are people around us all year experiencing difficulties. However, it's at this time of the year that we're more likely to actually extend a helping hand. Volunteers are plentiful at homeless shelters, food bank shelves are filled to capacity with increased donations, people are picking names from the "angel tree," children are singing holiday songs at nursing homes, and church pews grow more crowded. What this says to me is that people are taking time to evaluate their circumstances and are realizing the many things for which they are thankful. While it's not clear why we're prone to be more thankful this time of year, the important thing is that we are.

We are thankful for our families, our pets, and our friends. Professionally speaking, some of us are even thankful for the great attorneys we work with and the firms that allow us to practice in this very exciting and growing profession. I think we should also be thankful for the paralegals that came before us with a vision for our profession.

Only those who dared to think outside the box and dream big would have even imagined a paralegal division as part of the State Bar. This association with the State Bar has allowed us to increase our acceptance as professionals and partners in the practice of law. Through professionalism and hard work, our predecessors laid the founda-

tion which now allows paralegals to enjoy appointments on State Bar Committees, TBLS certification exams, membership opportunities in the State Bar College, and probably most importantly, the passing of the Texas Paralegal Standards by the State Bar Board setting forth a formal definition of the term "paralegal."

These same visionaries are those who dreamed of a statewide seminar with educational opportunities for paralegals. At that first planning meeting almost ten years ago, who would have thought TAPS (formerly Legal Assistant University) would be enjoying its ninth anniversary with record attendance of almost 300 registrants from all across the state, and some from other states? I tell you who would have thought that—those who dreamed it in the first place! Having worked with many of these wonderful people, I can tell you that they see *everything* as a possibility and failure is not an option.

Even though all these accomplishments were noteworthy and very time-consuming, it was still not enough. While continuing to look for ways to improve and build up the Division, Ellen Lockwood brought her idea for a desktop ethics manual to the Board. In true Paralegal Division fashion, the book not only became a reality it was published by West LegalWorks and is being marketed nationwide. The *Paralegal Ethics Handbook* is authored by

members of the Division and brings a lot of positive attention to the Division highlighting the professionalism of our organization.

All that said, these things are available to us because our predecessors not only had the dream, they brought it to the table and, with the help of others, saw it through to reality. Whether you are the one with the ideas, or the creative one, or maybe like me you're

the "worker bee," we need you to help move the Division and the profession forward. Great things like those mentioned are only possible if we have volunteers making it happen. I invite you to contact your Director and find out what help he or she needs. There are many opportunities on the local and state level to get involved. Some areas of the state still need Directors to lead and represent the members located in those Districts. Also, TAPS will be held in San Antonio in 2008 and there will be a need for on-site volunteers.

In sum, when thinking of all the things we are thankful for this season please include those hard working paralegals that came before us affording us all the opportunities we enjoy in this very fast growing profession, and then consider your place in our future success stories.



Happy Holidays,

A handwritten signature in black ink that reads "Patti".

NOTICE OF DIRECTOR ELECTION

Melanie Langford, ACP, Elections Committee Chair, 210.281.7063
mlangford@akingump.com

The election of directors to the Board of Directors of the Paralegal Division of the State Bar of Texas from District 2, District 4, District 6, District 8, District 10, District 12, District 14, and District 16 will be held April 4, 2008, through April 19, 2008. All active members of the Paralegal Division of the State Bar of Texas in good standing and registered to vote as of February 1, 2008, will be eligible to vote online at the Paralegal Division's website (in the Members-Only section). All voting must be completed on or before 11:59 p.m., April 19, 2008.

- Each potential candidate must satisfy the following requirements:
- Eligibility Requirements.** The candidate must satisfy the eligibility requirements of Article III, Section 3 and Article IX, Section 1 A and Section 4 of the Bylaws and Rule V B, Section 5c of the Standing Rules.
 - Declaration of Intent.** The candidate must make a declaration of intent to run as a candidate for the office of director through an original nominating petition declaring such intent that is filed with the Elections Subcommittee Chair in the candidate's district pursuant to Rule V B, Section 5 of the Standing Rules.
 - Nominating Petition.** The original nominating petition must be signed by and must be submitted to the Elections Subcommittee Chair in such district, on or before March 5, 2008. The number of signatures required on the original nominating petition shall be as follows:

Number of Registered Voters Within District	Number of Signatures Required
0 — 50	5 signatures
51 — 100	8 signatures
101 — 150	10 signatures
151 — 200	12 signatures
201 — 250	15 signatures
251 — 300	18 signatures
301 +	20 signatures

Beginning on February 1, 2008, each Elections Subcommittee Chair shall prepare and forward, upon request, the following materials to potential candidates for director in their respective district at any time during the nominating period:

- A copy of the List of Registered Voters for their district;
- A sample nominating petition; and
- A copy of Rule VI of the Standing Rules entitled "Guidelines for Campaigns for Candidates as Director."

To request information from the Elections Subcommittee Chair for your district, please contact:

District 2: Donna Sorensen, 214/880-7642 (Counties of Dallas and Ellis) dsorensen@munsch.com

District 4: Jennifer Fielder, 512/236-9955 (Counties of Bastrop, Bell, Blanco, Bosque, Brazos, Brown, Burleson, Burnet, Caldwell, Coleman, Coryell, Fall, Gillespie, Hamilton, Hays, Hill, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, McLennan, Menard, Milam, Mills, Robertson, San Saba, Travis, and Williamson) jmeiners@riewelaw.com

District 6: Kay Daniel, 806/796-7332 (Counties of Bailey, Borden, Cochran, Cottle, Crosby, Dawson, Dickens, Fisher, Floyd, Gaines, Garza, Hale, Hockley, Kent, King, Lamb, Lubbock, Lynn, Motley, Scurry, Stonewall, Terry and Yoakum) kdaniel@mhbg.com

District 8: Wanda Logan, 361/575-0551, (Counties of Aransas, Bee, Calhoun, DeWitt, Duval, Goliad, Jim Wells, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio and Victoria) wlogan@cce-vic.com

District 10: Angie Laird, 409/838-6412 (Counties of Chambers, Grimes, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Tyler and Walker) alaird@obt.com

District 12: Gloria Porter, 972/436-7584 (Counties of Archer, Baylor, Callahan, Clay, Cooke, Denton, Eastland, Foard, Grayson, Hardeman, Haskell, Jack, Jones, Knox, Montague, Palo Pinto, Parker, Shackelford, Stephens, Taylor, Throckmorton, Wichita, Wilbarger, Wise and Young) peromero.atty2@verizon.net

District 14: Kennetha Murphy, 936/633-4204 (Counties of Anderson,

Angelina, Bowie, Camp, Cass, Cherokee, Collin, Delta, Fannin, Franklin, Freestone, Gregg, Harrison, Henderson, Hopkins, Houston, Hunt, Kaufman, Lamar, Leon, Limestone, Madison, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Rockwall, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Trinity, Upshur, Van Zandt and Wood) kmurphy@zeleskey.com

District 16: Donna Crafton, 915/533-2943, (Brewster, Culberson, El Paso, Hudspeth, Jeff Davis and Presidio) dca@scotthulse.com

The following timetable is provided to guide you through the election process.

February 1, 2008: In accordance with the Standing Rules V B, Section 5e, the voter registration deadline shall be February 1 of each year.

February 1, 2008: Contact the Elections Subcommittee Chair for your district and request a nominating petition and, at your option, prepare a short resume to attach to such nominating petition.

Brochure or Resume: A brochure or resume pertaining to each candidate for director may be posted on the Paralegal Division's website (in the Members-Only section) and shall be prepared and furnished to the Elections Subcommittee Chair at each candidate's own expense. Such brochure or resume shall be received by the Elections Subcommittee Chair or the Paralegal Division Coordinator on or before March 5, 2008 (7 days prior to the posting of the ballots) to be included in the mailing of the ballots. Such brochure or resume shall not exceed two 8 1/2" x 11" pages or one 8 1/2" x 14" page.

Campaigning: After the signatures on the Nominating Petition have been verified (March 15, 2008), the nominee may begin actively campaigning. Solicitation by mail is proper, provided that any mailing is on personal stationery or employer letterhead (provided that the employer's permission has been obtained), or any mailing or communication by electronic mail is conducted by a member of the Paralegal Division. No mailing or communication can be conducted by any individual/entity not a member of the Paralegal Division. Candidates themselves, in addition to the above, may campaign by personal solicitation. The full expense of such mail solicitation shall not exceed the sum of \$500. However, to the fullest extent possible, all communications and solicitations, whether by letter or card or telephone, should concentrate on the candidate's merits and should avoid criticism of the other candidate or candidates. The excessive use of telephone solicitation by persons other than candidates through the use of WATS lines and similar organized solicitation is discouraged. Directors running for re-election cannot use Director communication as a form of campaigning. Any incumbent director must conduct his/her campaigning by personal, separate communication. Candidates shall avoid personal campaigning prior to 30 days before the date designated to mail or post ballots or the next following business day when the signatures on the nominating petitions for Director have been verified.

March 5, 2008: Return your Nominating Petition, properly completed, and at your option, with a resume or brochure (for posting to the Paralegal Division's website) to the District Subcommittee Chair. (Any petition received after March 5, 2008, will not be accepted. Faxed, Xeroxed, or teletyped nominating petitions **cannot** be accepted as proof of a candidate's eligibility for nomination.)

March 15, 2008: Elections Subcommittee Chair, after verifying signatures on the Nominating Petition, will forward a draft of the ballot to the Elections Chair.

March 26, 2008: Elections Committee Chair shall forward ballots to the Paralegal Division Coordinator for posting.

April 4, 2008: Postcards mailed for Director Election. Voting begins online.

April 19, 2008: Deadline for voting for Director Election. All voting must be completed on or before 11:59 p.m., April 19, 2008.

April 20, 2008: The Paralegal Division Coordinator with the Elections Subcommittee Chair for District 5 will cause such ballots to be tabulated and notify the active candidates of such election results.

If you do not have access to the Internet at home or the office, you can access the Paralegal Division website at your local library. If you have any questions, feel free to contact the Elections Subcommittee Chair for your district.



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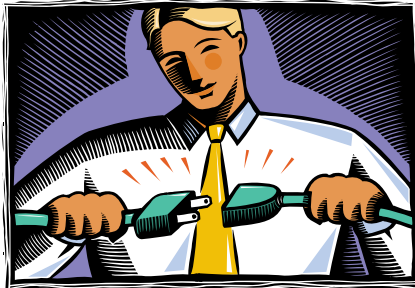
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EDITOR'S *Clote*

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

Some people always make everything harder than it has to be. I would be the first to admit I have a tendency to over-think life. Being a paralegal has taught me that sometimes I cannot see every step toward completion of a project, but the one thing that is certain is the fact that I will never get there at all unless I start working. I'm not crazy; it just never occurs to me that it will be impossible. Time and again, it has turned out not to be. I decide that I am going to achieve a goal and I make it happen. And it's not that I'm lucky; it is just that I am too simple to make things complicated without having to really work hard at it.

I've learned a lot over the past two decades. I have become a bit less naïve, and at times my exuberant persistence fades. In fact, there are many times when I ask myself, "How hard, how complicated, how overwhelmingly difficulty can I make this?" I often catch myself doing this, and then recall one of the things my father told me (repeatedly, and apparently for good reason): "It shouldn't be that hard to do. If you have to force it, you're not doing it right." Usually Dad was referring to my skills of putting something together or taking something apart, but I think his wisdom transcends the activity to which it can be applied.

I recently spent a good part of my work days climbing over electronic components and things I cannot name in the back of two 53-foot trailers to locate documents that may or may not be relevant to what may or may not turn into a lawsuit. It was dark, dirty (beyond description), and hot. There was evidence of rats, and at least one living cockroach. The "bonus" (besides reading the love letters some guy had stashed in his desk and the opportunity to work with an attorney from San Antonio), was to prove to myself that I could do it.

Why do we insist on doing it the hard way when the easy way will do? Perhaps the more we learn, the more "educated" we become, and the more analysis we engage in, the more we set ourselves up for pitfalls to present their creepy, crawly selves.

I wish I could say I have learned my lesson and don't fall into the "How hard can I make it?" trap anymore, but I will have to continue to aspire to *not* make things perfect. Except for snakes—next time one gets in the shower with me I'm calling my friend with the hand gun so we shoot it and turn it into a hat band!

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DEADLINE FOR SUBMISSION OF ARTICLES FOR THE SPRING ISSUE IS JANUARY 15, 2008.

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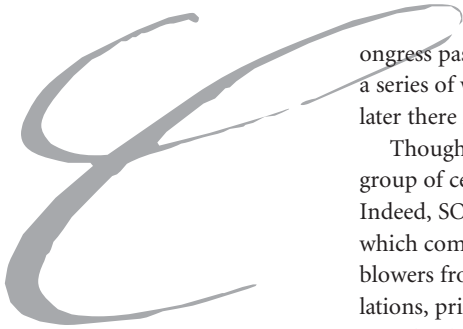




What SOX 806 Whistleblowers Need to Prove

Floyd R. Hartley, Jr.

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Congress passed the Sarbanes-Oxley Act (SOX)—hastily—on July 30, 2002, in the wake of a series of well-publicized corporate scandals and the resulting public outcry. Five years later there is still debate about its efficacy, vitality and cost.

Though commentators have leveled much disdainful criticism at SOX, at least one group of celebrants remains: corporate fraud whistleblowers, along with their lawyers. Indeed, SOX created a new class of whistleblowers and a new cause of action against which companies must protect themselves, in Section 806. This section protects whistleblowers from retaliatory or discriminatory actions by their employers for reporting violations, primarily of certain laws relating to fraud against shareholders.

What kinds of risks does this create for public companies? Five years of litigation has clarified those risks, at the same time it has clarified the whistleblower protection afforded by the law.

FILING DEADLINE STRICTLY ENFORCED

To complain about retaliation under Section 806, a whistleblower must file a complaint, either with the Secretary of Labor or OSHA, within 90 days of the alleged retaliation.

Importantly, failure to do so precludes the Department of Labor from awarding any relief and deprives federal district courts of jurisdiction. Employers facing the prospect of defending Section 806 complaints may take some comfort from the fact that the 90-day deadline is strictly enforced. In *Flood v. Cedant Corporation*, for example, OSHA dismissed a complaint that was filed five days late. Failing to file within 90 days of the retaliation is fatal to the whistleblower's claim and may afford the employer an absolute defense to liability.

THE TRIGGER

Because the filing deadline is strictly enforced, it becomes critical to determine when the 90-day clock starts ticking. Both the statute and implementing regulations require that a Section 806 complaint be filed within 90 days of the alleged violation.

The key, then, is when the alleged violation occurs. The regulation (29 C.F.R. §

Focus on...

1980.103) answers that question precisely, noting that an alleged violation occurs “when the discriminatory decision has been both made and communicated to the complainant.”

That means the clock may start ticking before the employee actually suffers the alleged retaliation. Indeed, that happened in *Flood v. Cedant*, where Flood’s Section 806 complaint was dismissed because, while it was filed 84 days after his actual termination, that was at least 95 days after Cedant told him he would be fired on a date certain. Thus, telling an employer that he will be terminated at the end of the month may immediately trigger the 90-day dock even though the employee remains employed another three weeks or more.

EQUITABLE TOLLING RARE

Facing the prospect of dismissal for falling to timely file a complaint, a num-

ber of employees have argued that the deadline should be equitably tolled. That is, they have asserted that as a matter of equity or fairness certain circumstances justify stopping the clock so it does not continue running against them.

SOX 806 obviously applies to publicly-traded companies, but it also encompasses individual officers, employees, and agents of the publicly-traded company, as well as its contractors and subcontractors.

Although the Department of Labor’s Administrative Review Board (ARB) has recognized the possibility of equitably tolling the deadline, stopping the clock is—by far—the exception rather than the rule. The clock will not stop, for example, merely because the public company allegedly will not be harmed or prejudiced. Nor is the employee’s or his attorney’s lack of familiarity with SOX sufficient. Ignorance is no excuse.

However, the ARB has identified three circumstances in which equitable tolling

may be appropriate:

- When the employer has actively misled the employee with respect to the cause of action.
- When the employee has in some extraordinary way been prevented from asserting his or her rights.
- When the employee has raised the precise statutory claim in issue, but has mistakenly done so in the wrong forum.

The employee, therefore, bears the burden of proving he or she is entitled to equitable tolling—that is, that something significant about the circumstances, as a matter of fairness, mandates stopping the 90-day clock.

Based on the decisions to date, which emphasize the limited availability of equitable tolling, the employee’s burden in that regard is substantial.

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PRIVATE COMPANIES MAY BE LIABLE

Since SOX focuses on risks to shareholders and Section 806 covers employees who report violations of law relating to fraud against shareholders, one would think that Section 806 applies only to publicly-traded companies. Ultimately that may prove true. However, while Section 806 obviously applies to publicly-traded companies, it also encompasses individual officers, employees, and agents of the publicly-traded company, as well as its contractors and subcontractors.

The ARB's decision last year in *Klopfenstein v. PCC Flow Technologies Holdings, Inc.* notes two ways in which private companies may be liable under Section 806.

First, on its own, a private subsidiary of a public company may be subject to Section 806. In *Klopfenstein*, the ARB held that its prior cases "did not have occasion to discuss whether a non-public subsidiary of a public parent could be covered under the Act." Instead of definitively resolving the issue of whether it did not, the ARB simply recognized that the question was not yet answered and left it open for another day. Private subsidiaries of public companies, therefore, should remain cognizant of that uncertainty and act accordingly.

Second, independent of the open question as to private subsidiaries, all private companies—and their officers—may subject themselves to Section 806 by, for example, acting as the agent, contractor or subcontractor of a publicly-traded company.

This may not require much. Whether a subsidiary or its employee "is an agent of a public parent for purposes of the SOX employee protection provision should be determined according to principles of the general common law of agency," the ARB said. Agency, it explained, depends on "the existence of required factual elements: the manifestation by the principal that the

agent shall act for him, the agent's acceptance of the undertaking and the understanding of the parties that the principal is to be in control."

The ARB also noted that a company's officers are typically considered general agents of the company. *Klopfenstein*, therefore, provides a profound warning that private companies (and their officers) should not ignore.

THE EMPLOYEE'S PRIMA FACIE CASE

Once an employee timely files a Section 806 corporate fraud whistleblower complaint, he must still prove his case. On this point, the Section 806 litigation to-date provides relatively straightforward guidance on the four basic elements of the employee's case:

- (1) that the employee engaged in protected activity;
- (2) that the employer knew about the protected activity;
- (3) that the employee suffered an unfavorable personnel action; and
- (4) that the protected activity was a contributing factor in the unfavorable personnel action.

Importantly, even if an employee proves each of these elements, the employer may still avoid liability by demonstrating by clear and convincing evidence that it would have taken the same action in the absence of the employee's protected activity.

PROTECTED ACTIVITY

To engage in protected activity under Section 806, generally the employee must blow the whistle on corporate fraud (or, in very limited instances, refuse to engage in it). Usually, it's enough for the employee to provide information about possible fraudulent conduct to a person with supervisory authority over the employee.

The employee must, however, blow the whistle about matters covered by SOX. It is not enough to complain about poor

business decisions, or even violations of other federal laws. Instead, the complaint must concern certain categories of fraud or securities violations—basically, fraud against shareholders. A key measure is whether the report relates to alleged misrepresentation of the company's financial condition.

"UNFAVORABLE PERSONNEL ACTION"

After blowing the whistle, the employee must show he suffered "unfavorable personnel action." This does not mean that he must be fired or demoted. Nor does it mean, though, that he can invoke Section 806 to complain about "ordinary tribulations of the workplace." Instead, the employee must have been subjected to something that either tangibly impacts his job or would, objectively, dissuade employees from complaining. The adopted standard is fairly flexible and may provide a continuing source of future litigation.

"CONTRIBUTING FACTOR"

Finally, the employee must prove that his employer knew about the protected activity—the whistleblowing—and that it was "a contributing factor" in the unfavorable personnel action he suffered.

Based on existing Section 806 litigation, that is not as high a hurdle as it might at first appear. The ARB has explained that "(a) contributing factor is any factor which, alone or in combination with other factors, tends to affect in any way the outcome of the decision."

Therefore, a complainant need not show that protected activity was the only or most significant reason for the unfavorable personnel action, or that a respondent's reason was pretext, but rather may prevail by showing that the respondent's "reason, while true, is only one of the reasons for its conduct, and another (contributing) factor is the complainant's protected activity."

Thus, the employee need only show that the whistleblowing was one of any number of factors contributing to the employment decision. With that, the employee may state a prima fade case under Section 806.

In response, though, the employer may still avoid liability by showing it would have taken the same action even if the employee never engaged in protected activity.

For almost five years now the Sarbanes-

Oxley Act has provided fertile ground for public commentary, dispute, and litigation. In recent months, talk of modifying the statute and curtailing some of its more costly requirements has escalated. Those discussed modifications, though, do not target the whistle-blower protection provisions of Section 806.

Thus, public and private companies alike would do well to familiarize themselves with the provision, its incumbent risks, and the lessons to be learned from

the first four-plus years of Section 806 litigation.

Floyd R. Hartley, Jr. is a partner in the Dallas office of Hughes & Luce LLP. He concentrates his practice on civil litigation defense in federal and state courts in Texas, in areas including commercial disputes, discrimination, harassment, retaliation, whistle-blower claims, "Sabine Pilot claims," and civil rights matters. He also represents clients in administrative proceedings.

IMPORTANT NEWS

ANNUAL MEETING

MARK YOU CALENDAR – The Annual Meeting of the Paralegal Division is scheduled for June 27, 2008 in Houston, TX..

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

CLE REQUIREMENT

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

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

Membership Information

CHANGES TO MEMBER INFORMATION

Paralegal Division members can now change their credentials, addresses, email addresses, preferred mailing address and/or phone numbers via the State Bar of Texas website. Go to www.texasbar.com; click on MyBarPage (top of home page). If you have never visited this page, you will need to set up a pin/password. Your password to set up your NEW Pin/password is the last four digits of your social security number (if the State Bar does NOT have your social security number on file, you will not be able to use this area nor will you have access to MyBarPage); once you set up the new

pin/password, you will be able to enter this section of the website to update your member records. If you have any problem accessing this page, please contact the Membership Department at 1/800-204-2222, ext. 1383.

MEMBERSHIP CERTIFICATE (Active Members Only)

Need to replace your Active membership certificate? Please complete the order form found on www.txpd.org under Members-Only area and follow instructions. The cost to replace an Active Membership Certificate is \$15.00.

MEMBERSHIP CARD

Need to replace your membership card? Please send a \$5.00 check or money order made payable to the Paralegal Division along with a letter requesting a new membership card to the Membership Department, State Bar of Texas, P. O. Box 12487, Austin, TX 78711.

Were you ever issued a membership card? If no, please contact the Membership Department of the State Bar of Texas at 1/800/204.2222, ext. 1383 or email at rcarbarjal@texasbar.com.

DELL COMPUTER DISCOUNT

The number assigned to the Paralegal Division by Dell Computer Corporation is: SS2453215. This is the number you will use to receive the 10% discount for purchase of computers. However, Dell does not have the 10% discount special continuously. Dell sends a notice when the discount is offered to our members at which time it is forwarded to the PD members via the PD E-group.

You may try to use this number anytime, but there are no guarantees that you WILL receive this discount at the time of access. Notices will continue to be forwarded to the PD E-Group when the discount is offered by Dell Computer Corporation.

PD Website Information

MEMBER DIRECTORY ONLINE

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

MEMBERS ONLY AREA

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



How to Work Effectively with an Interpreter

Wray M. Wade



orking with an Interpreter or Translator is an integral part of the litigation process. The role of an Interpreter/Translator has evolved over the years through a court system which allowed the use of friends and family members as an Interpreter to a very specialized certification process. Understanding the role of an interpreter has become one of the most difficult aspects of the legal communication field. Even though the words are used interchangeably they are two very different distinct forms of communication. In order to begin to clarify the roles of an Interpreter or Translator we should begin with a clear definition of an Interpreter and Translator.

Translator refers to the transference of a written text to a written text. In the legal field documents are presented in all forms for translation, most commonly the text is presented via email or CD ROM. Through this process the Translator transcribes the source document to the target document. The completed document will have the look and feel of the original source document, but in a different language.

The word **Interpreter** refers to verbal transference of parties communicating in different languages. A verbal translation not only conveys the words of the source language into the target language, the Interpreter also must interpret the intentions and feelings of the subject into the target language.

Two popular modes of interpretation that are most commonly used in legal proceedings: **Simultaneous Modes** and **Consecutive Modes**. Simultaneous interpretation is most commonly referred to as "shadowing." Shadowing is when the interpreter is speaking and listening at the

same time as the primary speaker. The Interpreter is serving two roles which a lot of times are done separately. The most difficult aspect of a simultaneous interpretation is the speaking and comprehension process that is constantly happening. During Consecutive Mode interpretation, the interpreter conveys a message in the target language in a sequential manner after the speaker. This mode requires that the speaker pause to allow the Interpreter to relay the message. This mode is used for non-English speaking defendants, witness stages at a trial, or for a witness to speak for the record during the pretrial process, during depositions, and sentencing.

Because of the pressure to immediately memorize and repeat in another language so as to not disrupt the flow of communication too much, many Interpreters chose to work in tandem in which one Interpreter is handling the research, while the other Interpreter is intently memorizing the message. During most depositions, Interpreters will sit next to the court reporter for verification of the correct information.

As the international community in America grows, the need for precise professional translation service increases. Understanding how Interpreters/Translators work and their role in the legal process can help reassure your firm that you are getting the best, most accurate representation.

Wray Wade has been a Japanese Interpreter for over 12 years. Wray Wade Consulting Group represent clients in an array of different languages and dialects during complex litigation. You can contact Wray Wade by email at ww@wraywade.com.

The Texas Path to National Information Exchange Model

Julie Wade, ACED

We live in a post-9/11 world of terrorist attacks, natural disasters and inner city crime that is disproportionate to any other time in recent history. Our law enforcement and judicial branches must be able to communicate with each other during emergency situations and share critical information needed in intelligence gathering operations. Other information sharing is also needed between hospitals, fire departments, local and state governments with federal agencies such as Homeland Security, the FBI, NOAA (National Oceanic and Atmospheric Asso-

ciation), the Department of Transportation, and/or the Center for Disease Control.

The Texas justice community is served by a wide variety of IT systems that were designed to suit their own specific purposes. Today, the courts have sophisticated case management systems that meet their internal operational needs, but they are just beginning to routinely share information between each other and with other agencies throughout the state and justice system. Police departments now have high-tech dispatch systems, mobile field

reporting technologies, sophisticated records management and crime analysis systems, but few until recently were able to integrate their systems with other law enforcement agencies to provide real-time information sharing of critical data at key decision points.

Because of the disparity in the way computer systems operate, it has been difficult for law enforcement and justice agencies that need to share critical information. As a result, vast amounts of data has been manually coded and transmitted resulting in duplicate data being captured and deployed. This results in loss of time and valuable resources being wasted in having to research data that is obsolete or contains errors. As you can imagine, law enforcement officers and judges often have been unable to receive timely, accurate, or complete information.

Thanks to extensible markup language (XML), the basic blueprint for data sharing on a statewide and national basis is now being developed that will curtail these problems and greatly enhance the accessibility and reliability of the information received and shared.

Background of the Texas Justice Integration Information Initiative, (the "TJI3 Plan")

Shortly after 9/11, Texas began its plan to open the state's computer infrastructure using the emerging technologies of XML to exchange information between computer systems in different jurisdictions, locations and levels of government so that all the various local, municipal and state agencies could communicate and share information within the state's justice community.

This plan was called the Texas Justice Integration Information Initiative, or what is now referred to as the TJI3 Plan. Step one of this plan was accomplished in 2002, and a charter was created to govern the statewide justice information sharing utilizing the XML standard data reference model to share information between the Texas criminal justice information exchanges, providing law enforcement, public safety agencies, prosecutors, public defenders, and the judicial branch with a



tool to effectively share data and information in a timely manner.

The Global Justice XML Data Model (GJXDM or Global JXDM)

At the same time Texas was undertaking this effort to open its telecommunications portals, in August 2002, a governmental task force from the Department of Justice and the Office of Justice Programs, working with researchers from the Georgia Tech Research Institute, were also tasked

with exploring the XML schema and applying XML best practices to design and implement the Global Justice XML Data Model (GJXDM or Global JXDM). The Global JXDM removes the burden from agencies to independently create exchange standards, and because of its extensibility, this model provided more flexibility to deal with unique agency requirements and changes. Through the use of a common vocabulary that is understood system-to-system, the Global JXDM enables access from multiple sources and reuse in multi-

ple applications. The first release of the Global JXDM was introduced in 2003. Texas began to adopt GJXDM into its TJI3 Plan.

Introduction to the National Information Exchange Model (NIEM)

The federal government, through an agreement between The Department of Homeland Security (DHS) and the Department of Justice (DOJ), improved the GJXDM schema and created the National Information Exchange Model (NIEM), opening further the framework for the sharing of information between local and state governmental and justice agencies with federal agencies and the federal government, specifically the DHS and the FBI.

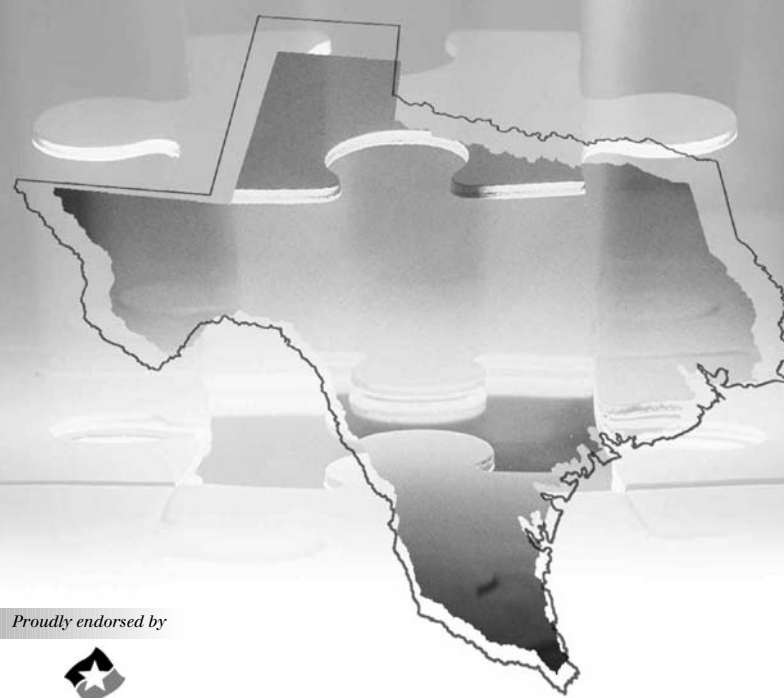
NIEM provides the platform for agreement on what different words mean and the structure and relationship of data. Reports of suspicious activity will have elements that are well-defined and related in a data model law enforcement can use without manually having to re-enter data. Today, a growing number of projects use NIEM standards, including:

1. The FBI's new National Data Exchange program. This is a national repository of criminal incident information.
2. The Sentinel project, an automated case management system for federal law enforcement agencies.
3. Justice's Regional Data Exchange.


Therefore, rather than integrating just the local, state and federal databases, NIEM is a cross-domain information exchange between key domains and "Communities of Interest," across all levels of government.

NIEM does not attempt to normalize all information components across all agencies and organizations, but only those that have cross organizational boundaries and only within that sub-set of data needed for inter- and intra-agency information exchange. In an emergency situation, local first responders (fire, EMS, police, health officials) can safely share critical information in a secure setting with other city, county, state or federal agencies that need

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to share this information.

NIEM facilitates the information exchange involved in these situations. NIEM also standardizes the data components and terminology used throughout all agencies sharing data by making these connections more expansive and expedient.

We now have an ALL HAZARDS imaginable networked environment being developed to link justice, emergency management and response, and intelligence gathering. NIEM ties everything together throughout the country. The first version became available to the public in 2006. NIEM 2.0 rolled out July 31, 2007.

Texas Justice Information Exchange Model (TJIEM)

Texas has again shifted its TJI3 Plan and has now joined as a Community of Interest in the national NIEM 2.0 model by identifying 28 IEPDs (local/state interchanges for development in the information sharing network) who began implementation of the standard on October 31, 2007. This update to the TJI3 Plan is now called the "Texas Path to NIEM."

The Texas Path to NIEM integrates the Texas Justice Information Exchange Model, (TJIEM) into five goals:

- Formalize the governance structure for interagency cooperation in the development and maintenance of the Texas Justice Information Exchange Model;
- Create a Texas Justice Information Exchange Model (TJIEM) that conforms to NIEM;
- Establish standards to improve integrity, accuracy, and timeliness of justice, public safety, and homeland security information;
- Create an Operations Plan to increase access to and to improve the response from justice and public safety data systems and to enable sharing across other domains in support of homeland security efforts; and
- Explore funding opportunities to support the efforts of local entities in pursuing the Texas Path to NIEM initiatives.

Don Farris of the Texas Department of Corrections, project manager for the Texas Path to NIEM initiative, explained how

Texas will use NIEM as an avenue to share information, "Say the Department of Family Protective Services wanted to share information about a licensed foster care provider notice to DPS. The court can send out the information on NIEM, and both the DFPS and DPS receive the information at the same time. Vice versa, if DFPS sends information, DPS and the OCA receive it. Rather than the usual route, where DPS says — hey Harris County, we need this information. By this method the information is sent once electronically."

Among some of the 28 IEPDs identified for the TJIEM to share their information exchanges using the NIEM standards include those appearing in Table 1 on page 16.

Some of the other IEPDs being considered for future implementation of the TJIEM include:

- Mental health information (psychological/psychiatric evaluation) needed between the Department of Mental Health and the Sheriff and TDCJ;
- Juvenile information needed between Juvenile Justice Agencies and the Sher-



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iff, Jail, Probation, Court, Law Enforcement and TDCJ);

- Pawn Shop information needed between Pawn Shops and Law Enforcement and DPS (pawn shops submit listings of new items received);
- Crime Lab Report information needed between the State of Texas Crime Lab and Law Enforcement; and
- Texas Gang Database Update information between Law Enforcement and

DPS—Gang Task Force.

Farris reports that the system is scalable. “You get to build it. But we want to follow that core national standard. You get your system set to receive the information on NIEM 2.0. This first contract is a local to state contract. The future system will be able to take that from the State of Texas and share it with the other states and federal government.”

Farris credits a core group of 9 or 10 people who got together and formed the Texas Integrated Justice Information Systems Committee, called TIJIS for the project’s success. This committee is comprised of state, municipality and county leaders, who have taken the information sharing to another level, which has brought us to the Texas Path to NIEM.

“In early November 2006, TIJIS realized the need to take steps to move

TABLE 1

Exchange Name	Sending Agency	Receiving Agency	Comment
Standardized Felony Judgment Form	Court, Sheriff	Sheriff, DA, Probation, Law Enforcement, TDCJ	Disposition and Sentencing Document will serve as a Texas standard for communicating the sentencing data elements and the sentence narrative. Will define a data structure that describes a court order of sentence and provide a model for electronic exchanges of sentence information between justice entities.
Booking Report	Jail, Sheriff	Sheriff, Jail, DA, Probation, Court, Law Enforcement, TDCJ	Standard Arrest Booking Report will provide a statewide electronic document for Jails to exchange booking information with all other “downstream” agencies in the justice process.
Indictment or Information	DA, Court, Sheriff	Sheriff, Jail, Probation, Court, Law Enforcement, TDCJ	Charging Document is developed by the District Attorney and used to begin a court case through the filing of formal charges. Will provide a statewide electronic document for the District Attorney to exchange charging information with all other agencies in the justice process.
Victim Impact Statement	DA, Sheriff	Sheriff, TDCJ, DA, OAG	Victim Impact Statement may contain highly sensitive information and will be treated highly confidential.
Licensed Foster Care Provider Notice	DFPS	Law Enforcement	Law Enforcement agencies are required to notify Texas Department of Family and Protective Services of law enforcement calls of service to licensed foster care provider locations.
Document Service Request	OAG, Court, DA, DPS	Sheriff, Constable, Private Service Provider	The Court, OGA or DA may request that a document is served on an individual by the Sheriff, Constable, or Private Service Provider.
Suspicious Activities Report	Law Enforcement, Fusion Center, Other Criminal Justice Agencies	Law Enforcement, Fusion Center, Other Criminal Justice Agencies	SARs that would contain a list of electronic data elements that could be pushed to other agencies of interest.
Delinquent Child Support Notification	OAG, Court, Child Support Office	Review family code 232.002 (Many agencies involved)	The Delinquent Child Support Notification will provide a statewide electronic document for agencies to report an individual who is delinquent on child support payments and is no longer eligible to receive licenses (driver license, etc.)
Standard Citation (Traffic/ Ordinances)	Law Enforcement	Court, DA, Probation, Fusion Center, State Law Enforcement Agencies	The Standard Citation will provide statewide electronic documents for Local and State law enforcement agencies to exchange Traffic Citations and Ordinance information with all other “downstream” agencies.
Criminal History Notification to Licensing Agency	Courts	Licensing Agencies (SBEC, Dept. of Insurance, Nurse Examiners Board)	Licensing Agencies will receive notification of criminal convictions and/or grants of deferred adjudication.

towards NIEM," Farris said. Farris and other members of TIJIS went to Austin in an effort to raise awareness of the problem and gain support on a state level. They were encouraged from the response. TIJIS sent out an RFP in early Spring 2007. When it came back, the contract was awarded it to UNISYS, the successful vendor. And so, the Texas Path to NIEM has been started. "From November 2006 through August 31, 2007, everything snowballed pretty quickly," said Farris. "There was a lot of hard work put in by DPS, OCA and DCJ, Harris County, Tarrant County, and especially the leadership of the TIJIS Board."

Don Farris is now busy spending his time marketing NIEM to counties and municipalities throughout Texas. "We have to tell them we've got these standards, they are NIEM standards, they can

help you, and they can help us to exchange information quickly and more accurately. And they can help in any emergency response situations. That's all what we're about, sharing this information and getting to the necessary people as quickly as we can to help them make decisions on the situation or keep the flow of information accurate and in non-emergency situations keep it moving."

The Intelligent Transportation System and Public Safety Information Exchange

Local governments are also taking advantage of the information sharing exchange provided by NIEM. The IJIS Institute's Intelligent Transportation System and Public Safety Information Exchange project is currently working with the City of Houston, TranStar and Metro

Police, to implement a Field Operation Test (FOT) for the project's Incident Notification exchange using NIEM 2.0. The Department of Transportation and Department of Justice co-sponsor the project with management support provided by the IJIS Institute.

Conclusion

Texas is in a much better position today than ever before to share critical information, thanks to Don Farris and the other leaders in our State who are working hard to bring us into a safer world to live.

Julie Wade, ACED, is a legal assistant with Harrison, Bettis, Staff, McFarland & Weems, LLP.

Workaholics Paralegals Unite!

By Ginger D. Gage, TBLS, ACP, Board Certified Paralegal—Real Estate, Texas Board of Legal Specialization, Certified Paralegal—Advanced Certification—Real Estate, National Association of Legal Assistant

As I walked down the dimly lit hallway, I tried to calm my nerves. "Everyone here understands, Ginger. They've all been there."

It wasn't helping.

I glanced nervously at each door, searching for #113. At the end of the hall, I rounded the corner and found it. I wrung my hands and thought about turning back. Finally, with a deep breath, I trembled and stretched out my hand for the knob. The door made a loud creak as it opened, and I cringed as everyone turned to look at the new arrival. I somehow mustered a quiet hello before slipping into an open seat in a circle of chairs. Others slowly trickled in. I tried not to make eye contact. Finally, a middle-aged woman in a sharp business suit stood and began to speak in an office tone. It was like she was mocking us all.

"It looks like we are ready to begin here," she said, shuffling papers as though she knew it would be nails on a chalkboard. A few people groaned. "Ma'am, why don't you start us off." I didn't want to look up. Surely she wasn't speaking to me. "Ma'am, we're on a deadline here," she repeated.

I knew I couldn't let everyone down. It wasn't in my nature. I stood and looked around at the faces staring up at me. The tired, sunken eyes. The paper-cut fingers bent awkwardly from a Carpel-Tunnel inflamed wrist. The telling red bump on the forehead where it met firmly and often with a desk. Suddenly, I was infused with a new strength, a feeling that was almost pride. I raised my chin and said the words that countless others had said before me... "My name is Ginger—and I am a workaholic!"

"Hi, Ginger," was the unified response, "welcome to Workaholics Anonymous."

The WA meeting progressed well. Everyone had their stories. Unpaid overtime. Daunting deadlines. Company laptops received under the guise of a "gift" but only installed with work programs. Some even spoke of never seeing the light of day—they arrived at the office before sunrise and left after their families had gone to bed. A homemade meal had been replaced by fried chicken from a bucket (and that was only if they had time to eat at all). Lunch hours were stolen. Sticky notes went missing. Files were ripped apart by attorneys only to be returned as a shameful shattered mess of papers, completely devoid of order and covered in the boss's double shot latte with skim milk WHICH was bought by the paralegal on her way to the office as she juggled a brief-

case, a banana, an unsigned report card, a cell phone, a new ink cartridge, and balanced a ball on her nose while doing the Macarena. It was a sad sight indeed. Tears were shed. Bonds were made. By the end of the meeting, each person knew the

truth about WA—it is a place for people who . . . *have more time than we do!!!!* Although none of the paralegals returned to another WA meeting, they all remembered their experience, many of them similar to my own. And since admitting a

problem is half of its resolution, let us all lean on each other (for a 10 minute nap) as we say together, “My name is _____, and I am a workaholic.”

Ginger D. Gage, TBLS, ACP is with Hill & Calk, P.C. in Longview, Texas.

Technicalities

By Pamela L. Crosby

If there are any of you who feel as though your growing experiences with today's technologies is very much like a trip with Alice down the rabbit hole, this column is for you. Our purpose here is to familiarize you with many of the features present in today's technologies that we hope will make your day easier. We invite your comments and suggestions as we focus on improving skills and gaining new perspectives on technology as it affects a paralegal's daily tasks.

Keeping a Positive Outlook

The following applies to Microsoft® Office Outlook® 2003 and 2007.

If you are like most paralegals, I will bet you have occasions where you wonder where your time—even your day—went. How many times have you looked back on your day and wished that you had some way to keep track of all of the things you did that day? Wouldn't it be wonderful if you could see how much time you spent on each task you performed during the day, regardless of whether you spent the time (1) drafting or revising a document, (2) talking on the phone, or (3) taking that elusive break? If you use Microsoft Outlook 2003 or 2007, you have access to a little known feature that can grant—at least partially—your wish.

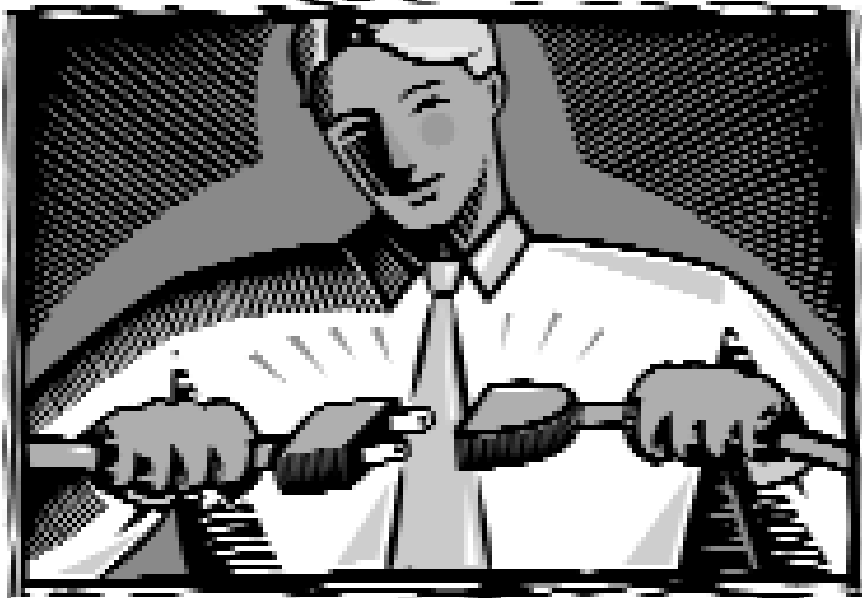
Journal is a feature in Outlook that can record or keep track of the dates and times you (1) interacted with Outlook contacts, (2) created or made revisions to Office documents, (3) participated in conversations, meetings, or remote sessions, or (4)

received faxes, meeting requests or cancellations, or a task request. You can also use it to simply take notes or to locate an Office document you've worked on if you've forgotten where you saved it, because *Journal* not only remembers the date and time, but it remembers the place where you stored the document. Maximizing *Journal's* capabilities might require a few minor tweaks to your routine, but I think you will find that these small initial investments in time provide a large payoff later. Here's how:

Automatic Time Tracking. *Journal* can be set to automatically track the time you spend preparing, modifying, and reviewing documents in Microsoft Office System programs

(Word, Excel, Access, PowerPoint, etc.). To set *Journal* to track your documents, select the Microsoft programs you wish it to track by clicking on the **Tools** menu in the main Outlook window and selecting **Options**. Midway down the **Preferences** tab is a section entitled “**Contact and Notes**.” Located in that section is a “**Journal Options...**” button. From the **Journal Options** window select which items, contacts, and files you wish *Journal* to record. Once designated, *Journal* will faithfully track any tasks you perform that fall within these parameters.

Manual Entry of Documents. Want to record something that isn't included as an automated item? Do you work on Corel® WordPerfect® or OpenOffice.org documents? Would you like to record a tele-



phone call? Need to jot down a quick note? *Journal* can do all of that and more. Open *Journal* (you can click on "Go" in Outlook's menu—you will find "Journal" at the bottom; the shortcut keys are [Ctrl]+8, or you can add the *Journal* view button to the Navigation Pane by clicking Add or Remove Buttons at the bottom of the Navigation Pane, then clicking Journal). Once *Journal* is open, click on "New," and an untitled **Journal Entry** will appear. Fill in the Subject and select the Entry Type from the drop down list. You can categorize your entries or, if you would like to be able to sort your manual entries by a specific project or client, fill in the Company with the client's name or a couple of words that describe the project. Start the timer if you wish to time your entry. Save the entry when you are finished and *Journal* will add the new entry to its database.

View Your Entries as a Timeline. The Timeline view is the default view in *Journal*. You can view your entries by Day (including Today), Week, or Month. To change the view click on the appropriate button on *Journal's* toolbar. You can also change the way your timeline view (or any view) looks. To customize the view, click the View menu, point to **Current View**, then click **Customize Current View**. Click Other Settings then select your desired options.

Tracking E-mails from a Specific Contact and Other Neat Things. Associating an Outlook contact with a Journal item allows you to track e-mails from certain clients or contacts. If you use the predefined **By Contact** view in *Journal* you can easily locate the items for a specific contact. You can also manually add travel time, expense items, or any type of item you can think of to *Journal* to help you analyze and manage your time.

Of course, just storing data is not the answer. Being able to use it effectively is. At the end of a long day (or week!) when you suddenly realize that you have been busy every minute and not had time to record your time, Journal can save the day.

Viewing and Retrieving Information. Of course, just storing data is not the answer. Being able to use it effectively is. At the end of a long day (or week!) when you suddenly realize that you have been busy every minute and not had time to record your time, *Journal* can save the day. If you have set *Journal* to (at the very least) automatically track your documents, you can go to *Journal* and review which documents you worked on and how long you worked on each one. This feature alone has saved me many times.

If you would like more details on how to use *Journal*, Que Publishing has a sample chapter available to the public on their web site that is entitled "Staying Organized With the Outlook Journal." It is available as a PDF download at http://www.quepublishing.com/content/images/0789729563/samplechapter/CH15_9563.pdf.

Developing a Loyal Entourage
The following applies to Microsoft® Entourage® 2004.

If your firm uses Macintosh® computers, you may be using Entourage rather than Outlook. Entourage is Microsoft's e-mail client and personal information manager for Mac OS 8.5 and higher. Entourage 2004 introduced the *Project Center*, a feature that can view—in a single location—any e-mail messages, notes, documents, or contacts related to a particular project. *Project Center* is integrated with Word, Excel, and PowerPoint but you can also add documents other than those

created in Office.

While *Project Center* has a few features that might be similar to *Journal's*, it is not Outlook. The main focus of *Entourage* is on keeping individual projects (and individuals!) organized and on schedule. Of course, a project can be anything that requires planning—everything from preparing responses to discovery and document productions to coordinating an in-house CLE seminar sponsored by a vendor. Any event that needs planning and has deadlines can benefit from *Project Center's* unique capabilities. *Project Center* will handle many types of information connected to a project: contacts, calendar events, e-mail messages, electronic documents, notes, and even scrapbook clips. Here are a few ways you can use *Project Center* to keep track of your tasks and assignments:

Automatic Document Tracking. For each new project you set up, you can direct *Project Center* to automatically create "Project Watch Folders" on your hard disk to store your project information. Project Watch Folders can help you stay organized and on-schedule by storing *Entourage* messages and documents related to the project and tracking or "watching" for any changes in these folders (whether items have been deleted, revised, or added). The two folders *Entourage* creates for each project are the Entourage Project Watch Folder, which stores e-mail related to the project, and the Finder Project Watch Folder, which contains documents and "aliases" or shortcuts to documents that are associated with or linked to the project but stored elsewhere on your computer.

Once you have set up your project, one of the simplest ways to add a Note, Task or event to your project is to select or highlight the item then click the Projects toolbar icon and select the project name from the list. You can, however, add more than just Office documents to your project—you can add *any* pre-existing item to your project.

Manual Entry of Documents. The Finder Project Watch Folder can store many types of documents associated with your project, includ-

ing scrapbook clips and files that have been created in applications other than Office applications. Adding documents to a project is quick and easy. Click the Files tab in the *Project Center*. Click Add, then browse to the desired document and select it. You can also store a document in the Finder Project Watch Folder by using the drag and drop method and once you do so, that document is automatically associated with the project. By way of example, if you had downloaded some PDF files containing case law for a project to a certain folder, to add these documents to your project you would simply drag the original document icon or its alias into the Project Watch folder on your Desktop. Scrapbook clips can be assigned to a project by clicking on the clip to select it, then clicking the Projects button in the Organize pane and selecting the desired project from the list.

View Your Entries as a Timeline. *Project Center's* main page displays as a visual timeline covering a one week period. If you use the *Project Center* to create a calendar event, that event is added to both your Entourage Calendar and your project schedule on the Project Palette and becomes viewable from other Office applications.

To limit your view to those events that are associated with a particular project, click the Project Events button on the Schedule tab. To restore your Calendar view to display all of your events, click the All Events button; both of these toggle buttons are located on the right side of the screen above the calendar on the Schedule tab.

Tracking E-mails from a Specific Contact and Other Neat Things. Entourage can be set to link to a specific contact and automatically "track" any messages sent to or received from that contact. One of

Taking advantage of the tools available to you is not only smart, it is essential to your success. If you have not already used the Journal feature in Outlook or the Project Center in Entourage, try it out.

the least confusing methods of doing this is to open the contact's record in the Address Book, and once the record for that contact is open, click the Projects toolbar icon and select the project's name from the list. To create reminders, use tasks. For example, you might create a task to remind you to make hotel reservations for witnesses. Create a new task by clicking New and then clicking Task. Create a name for the task and specify when the task should be completed. Another neat feature is the notes feature. Since the Notes to Self box is immediately visible in the upper-right hand corner of the Project Palette, you can use this area to help you plan and also to remember a prior train of thought. For instance, you might want to jot a note to yourself about collecting and establishing a database of local vendors in case of an emergency during an out-of-state trial. This feature makes it much easier to pick up where you left off last time you worked on your project.

Viewing and Retrieving Information.

Although *Project Center* is a component of Entourage, it is accessible from any of the Office applications. To view a list of all the projects you have created, click the *Project Center* icon in Entourage. To open any of the files you've associated with a project, just go to the *Project Center's* File tab and double-click the filename. If you think the

file list is out of synch or not showing all of the files you've associated with your project, click the Refresh button on the Files tab.

Finally, at the bottom of the Project Palette is a customizable list that you can use to display new and recent e-mail messages, tasks due this week or past due, items from categories that you specify, important Entourage or Microsoft Messenger contacts, and recent notes or files. This is a handy way to give prominence to certain types of information that you most want to keep an eye on while you are monitoring your project.

More on the use of Macs and Microsoft Office 2004 in a law office can be found at Ben Stevens' web site and blog at http://www.themaclawyer.com/the_mac_lawyer/2006/10/source_mac_offi.html. You may also be interested in joining the Macs In Law Offices group at <http://groups.google.com/group/milogroup>.

Taking advantage of the tools available to you is not only smart, it is essential to your success. If you have not already used the *Journal* feature in Outlook or the *Project Center* in Entourage, try it out. One recovered time entry for preparation of an Excel spreadsheet or a Word document might convince you that the time you spent setting up *Journal* was worth it. And being able to locate that crucial document for your boss within moments of his request to find it may convince you that *Project Center* was just the assist you needed to help you stay organized and productive. And while it may not truly *be* magic, your attorneys may think your improved productivity is.

Pamela Crosby is a Litigation/Trial Paralegal for Kessler & Collins, P.C. in Dallas, Texas. Microsoft, Microsoft Office Outlook, and Entourage are registered trademarks of Microsoft Corporation in the United States and other countries. Corel and WordPerfect are trademarks or registered trademarks of Corel Corporation and/or its subsidiaries in Canada, the United States and/or other countries. Mac and Mac OS are trademarks of Apple Inc., registered in the U.S. and other countries. All other trademarks are the property of their respective owners.

Texas Advanced Paralegal Seminar (TAPS) 2007 — Addison, TX

By Javan Johnson, ACP and Cecile N. Wiginton, CP

In a word — “WOW!” It was an incredible TAPS. The 2007 event had the highest number of registrants ever in the 9 years that TAPS has been held, with 293 registrants!

A very special *Thank You* to the TAPS 2007 Planning Committee who made TAPS such a great success: Javan Johnson, ACP (Longview), Chair, Cecile Wiginton, CP (Midland), Online CLE Chair, Patricia Giuliano (San Antonio), Board Advisor, Star Moore (Fort Worth), CP, Speakers, Debbie Oaks Guerra (Flower Mound) and Sharon Taylor, CP (Houston), Vendors, Gloria Porter (Lewisville), Marketing, Nan Gibson (Houston), Door Prizes, Ellen Lockwood, ACP, RP (San Antonio), Registration, and Frank Hinnant (Innovative Legal Solutions, Houston) as special advisor.

Educational Presentations:

Speakers were phenomenal as usual. Just to highlight a few, Tom Mighell, Senior Counsel and Litigation Technology Sup-

port Consultant for Cowles & Thompson in Dallas spoke on “Finding a Digital Needle In An Electronic Haystack: Internet Research for Legal Professionals”. Mr. Mighell is a favorite speaker at TAPS returning again this year to share his wealth of

knowledge about researching on the Internet and electronic discovery issues. His topic reaches all areas of law, teaching the right tools and the best strategies for searches. He also discussed the Directory vs. Search Engine. Directories, compiled by humans search engines, are computer based and use spiders or robots that crawl the Web to find words. He also covered the Meta-Search Tool and other search strategies and search syntax. Mr. Mighell

offered many cool tools for Google and explained how to create documents in basic Word format so that several people can work on the document at the same time. He explained bookmarking and setting up a Google notebook which is a great

way to keep information you have found on the Internet. His favorite tool is RSS (Really Simple Syndication). There is no fee to subscribe and you get a feed of search information that comes to you automatically. There is a good article in *Law Practice Today* by Tom Mighell on RSS.

Jordan W. Cowman is Board Certified in Labor and Employment Law by the Texas Board of Legal Specialization and spoke on multinational employees. Mr. Cowman was an extremely entertaining speaker bringing animated life to his topic on international labor laws. He was an employer advisor from 2002-2004 to the United Nations’ International Labor Organization which is based in Geneva. He used an illustration of “Dilbert Goes to Brussels (to work for an American company doing business in Belgium)” as a scenario to explain the complexities of international labor laws and the ramifications of U.S. employers sending employees to work in foreign countries. The speaker explained that an American employment





agreement can be construed and litigated based on the law of the country in which the employee is working regardless of the fact it was written based on laws in our country. European labor laws typically favor the employee. In the case of terminations, the best rule of thumb is to bring the employee home then terminate them, but problems can still remain under that foreign country's laws. The best rule of thumb is to keep the employee until the statute of limitations runs. Mr. Cowman explained the benefits of working overseas, some of the tax implications, and discussed the Civil Rights Act of 1991 which now applies overseas. The speaker discussed various cases of Mexican Nationals suing under U.S. law and Title 7. Mr. Cowman also touched on the fact that employment at will is an American concept, but that the European concept is that the employee is vested in the company. This is the same for South America and the Far East.

Matthew M. Jennings of Cox Smith Matthews Incorporated, San Antonio, Texas, spoke on "Napster, Grokster & Other P2p Punksters." Mr. Jennings discussed the phenomenon of cybersquatting while allowing businesses greater access to its customers, and how this can threaten the intellectual property of the business. Traditional copyright law and direct infringement was also discussed. He set out the requirements and benefits of registration, exclusive rights and duration. This is a valuable industry, a \$14 trillion industry — \$700 billion this year. He fur-

ther discussed direct infringement, unmasking the registrant (the cyber thief triad is Russia, Cayman and China), social networking sites such as YouTube and MySpace and then discusses indirect infringement i.e. "If you have knowledge the court will

find you liable." Case law was covered with regard to contributory infringement and the copyright statute 17 U.S.C. 6 501. Contributory Infringement: the *Sony* Defense; Vicarious liability: the *Napster* Case; Inducement: The *Grokster* Case, were just a few of the big cases covered. Enforcement strategy was discussed and the changing marketplace. Mr. Jennings also noted that the three major distributors of music are Wal-Mart, Best Buy, and iTunes and that how music sales greatly increased with DVD use and sales. P2P networks were discussed and the evolving threat of "third generation P2P networks".

Jim Wood, an Investigator in the Check Department/Identity Theft Task Force of the Dallas County District Attorney's Office, gave a summary on identity theft. With the increase in identity theft, this speaker defined the various types of identity theft and mail fraud. Types of identifications stolen fall into two categories: personal information which includes date of birth, social security number, driver's license, passport, maiden name, etc. and financial information which includes credit card numbers, bank account numbers, PINs and insurance information. The new passports have a chip in it containing all your personal information. A pouch is available to help you block this electronic data when going through security areas. The speaker described in detail all the scams out there waiting to prey on victims. If you are a victim of identity theft, there is a Resource Center at www.idtheft-center.org. Texas is the fourth in the

nation for ID theft. He recommended sending a money order instead of using PayPal or other forms of payment for internet shopping. Mr. Wood described how ID theft occurs including the skimming devices that some clerks and waiters use to capture your credit card information. Mr. Wood defined what is needed to prosecute the theft, including the need for immediate reporting, the agencies to notify, and prevention.

Socials:

The TAPS socials were beyond expectations, again! The *WARM-UP WELCOME* Social was held on Wednesday evening at the Crowne Plaza Hotel (TAPS Headquarters), where the attendees enjoyed appetizers, cash bar, and mingled with friends and sponsors. The attendees were given the opportunity to make photo buttons with friends and colleagues, which were a lot of fun. There were 200 attendees and vendors at the Wednesday evening event. Following the Welcome Social, shuttles were provided to transport attendees to dinner at various restaurants. Team Legal was the sponsor for the photo buttons and the shuttles.

The *STRIKINGLY DIFFERENT EVENING* Thursday night social was held at 300 Dallas gaming facility, where the attendees were able to participate in neon bowling, black light miniature golf, billiards tables, and a game room. There was a bowling tournament as well as a hole-in-one contest. The attendees also played various arcade games and billiards. Lots of competition going on at this terrific fun event...with everyone having a great time! To the delight of the event attendees, there was a tremendous buffet and special evening beverages.

The *FINAL SCORE* Friday luncheon was our final social event of TAPS. Again this year we had a Grand Prize sponsor, New-Line Legal Practice Support, who sponsored a \$1,500.00 cash prize which was awarded at Friday's luncheon. The keynote speaker for the final celebration of TAPS 2007 was Jay R. Downs, Attorney at Law, founder and shareholder of the

Downs Stanford firm in Dallas. Presenting “Ethics For People and Paralegals, Too!”, Mr. Downs kept the audience engrossed with his many stories and brought laughter to the audience by sharing antics throughout his life that molded his integrity and ethics. He attributes training that began with his parents, teachers and coaches, as well as friends and peers who all framed his character and outlook on life. He left us with the pro-

found challenge: to have a “Courageous Heart and Humble Spirit” and live our ethics daily both in and out of the workplace.

Last but not least, the TAPS 2007 Vendor Exhibit Hall was superb. There were a total of 42 exhibiting legal service companies, 6 social sponsors, and a “grand prize sponsor”. The sponsors are listed at the end of this article. The Paralegal Division

thanks each sponsor that made this year’s event a great success. If at all possible, the Division is asking each PD member to use these companies as a special thank you for their support.

Save the date and plan to attend TAPS 2008. The Division will celebrate TAPS 10th anniversary— and it will be held in SAN ANTONIO on SEPTEMBER 17-19, 2008.

Warm Up Welcome Social – Wednesday
Team Legal, Houston

A Strikingly Different Evening Social – Thursday

Hollerbach & Associates, San Antonio
Innovative Legal Solutions, Houston
Robert Half Legal, Dallas
Strategic Litigation Partners, Houston
Written Deposition Service, LP & Copy Solutions, LP, Dallas

CD Rom Speaker Diskette Sponsor
Litigation Solution, Inc., Dallas

Tote Bag Sponsor
C2Legal, Dallas

Portfolio Sponsor
Team Legal, Houston

Patron Directory
Innovative Legal Solutions, Houston

TAPS Signage Sponsor
The Exhibit Company, Austin

GRAND PRIZE SPONSOR

NewLine Legal Practice Support, Dallas, TX
www.newlinelegal.com

The following legal service companies *exhibited at the TAPS 2007* seminar.

Adams & Martin Group—www.adamsmartingroup.com
Ajilon Staffwise Legal—www.ajilonlegal.com
American Language Technologies—www.americanlt.com
Blue Ribbon Legal—www.blueribbonlegal.com
Blumberg Excelsior—www.blumberg.com
C2 Legal Digital Document Management—www.c2legal.com
Capitol Services Inc.—www.capitolservices.com
CaseFileXpress, L.P.—www.cfxpress.com
Cerami Search Group—www.ceramisearchgroup.com

Charlotte Smith Reporting, Inc.—www.simplecharlotte.com
CT, a Wolters Kluwer Business—www.wolterskluwer.com
Deposition Resources, Inc.—www.depositionresources.com
Digital Copy LLC—www.digitalcopyllc.com
Docu-Trac—www.gooeyssoft.com
Esquire Deposition & Litigation Solutions—
www.esquirecom.com
Exhibit Company (The)—www.theexhibitcompany.com
Flashback Data, LLC—www.flashbackdata.com
HG Litigation Services—www.hglitigation.com
Hill Schwartz Spilker Keller LLC—www.hsskgroup.com
Hollerbach & Associates—www.hollerbach.com
Innovative Legal Solutions—www.innovativelegalsolutions.com
ISIS Investigations, Inc.—www.isisinv.com
Kelly Law Registry—www.kellylawregistry.com
Legal Partners LP—www.legalpartners.com
Legally Large—www.legallylarge.com
LexisNexis File & Serve—www.lexisnexis.com
Litigation Solution, Inc.—www.lsilegal.com
NALA—The Association of Paralegals/Legal Assistants—
www.nala.org
National Federation of Paralegal Associations, Inc.—
www.paralegals.org
One Legal, Inc.—www.onelegal.com
Paralegals Plus, Inc.—www.paralegalsplus.com
Reliable Document Retrieval, LLC—512.312.5650
Robert Half Legal—www.sullivan@roberthalflegal.com
Ruffin Consulting Paralegal & Transcription Services—
www.RuffinConsultingInc.com
Security Private Services—
http://privateinvestigator.lawinfo.com/expert/lacy
SetDepo—www.setdepo.com
Strategic Litigation Partners—www.slplegal.com
Sunbelt Reporting & Litigation Services—
www.sunbeltreporting.com
Team Legal—www.teamlegal.net
Texas Institute for Specialty Certification—www.txisc.org
Trial Logistics, Inc.—www.triallogistics.com
Written Deposition Service, LP & Copy Solutions LP—
www.writtendeposition.com

PARALEGAL DIVISION, STATE BAR OF TEXAS

**NOTICE OF
BYLAWS AMENDMENT**

The Active Members of the Paralegal Division are, hereby, given notice of a bylaws amendment election to be held Spring 2008. Below are proposed bylaw amendments that will be placed on the ballot.

Effective date of bylaw, if approved by the membership of the Paralegal Division, will be the date it is approved by the State Bar of Texas Board of Directors.

PURPOSE FOR PROPOSED REVISIONS TO THE BYLAWS:

1. Move Director Elections earlier in Spring.
2. Allow current Active Members to vote in each Election.
3. Allow an election to be held effectively, efficiently and ethically.
4. Keep an appropriate notice period, in accordance with the Division's standards.

CURRENT/PROPOSED (UNDERLINED)

Section 2, b, 1 a.

Elections of Directors. The Election Committee shall cause a Notice of Election of Directors to be prepared and delivered to the Publications Committee Chair. The Publications Committee Chair shall receive the Notice of Election of Directors no later than 30 days prior to the Voter Registration Deadline Date.

Section 2, b, 1 a.

Elections of Directors. The Election Committee shall cause a Notice of Election of Directors to be prepared and delivered to the Publications Committee Chair. The Publications Committee Chair shall receive the Notice of Election of Directors no later than 30 days prior to the Nominating Period.

Section 2, b, 1, b.

Amendment(s) to Bylaws. . . . The Elections Committee Chair and the Publications Committee Chair shall receive the Notice of Election for amendment(s) to Bylaws no later than 30 days prior to Voter Registration Deadline Date.

Section 2, b, 1, b.

Amendment(s) to Bylaws. . . . The Elections Committee Chair and the Publications Committee Chair shall receive the Notice of Election for amendment(s) to Bylaws no later than 30 days prior to the mailing of the official publication.

Section 2, b, 1, c.

Referendum. . . . The Elections Committee Chair and the Publications Committee Chair shall receive the Notice of Election for

referendum no later than 30 days prior to the Voter Registration Deadline Date.

Section 2, b, 1, c.

Referendum. . . . The Elections Committee Chair and the Publications Committee Chair shall receive the Notice of Election for referendum no later than 30 days prior to the mailing of the official publication.

Section 2, b, 1, d.

Publications of Notice. The Publications Committee Chair shall cause the Notice of Election of Directors, amendment(s) to Bylaws, or referendum to be published in the Division's Newsletter no later than 15 days prior to the Voter Registration Deadline Date.

Section 2, b, 1, d.

i. Spring Election: The Publication Committee Chair shall cause the Notice of Election of Directors, amendment(s) to Bylaws, or referendum to be published in the Division's official publication, newsletter and/or website no later than 30 days prior to the mailing of the official publication.

ii. Fall Election: The Publication Committee Chair shall cause the Notice of Election amendment(s) to Bylaws, or referendum to be published in the Division's official publication, newsletter and/or website no later than 30 days prior to the mailing of the official publication.

Section 2, c, 3

Deadline. The Voter Registration Deadline Date.

Section 2, c, 3

(deleted)

Section 2, c, 4 Section 2, c, 3

(renumbered accordingly)

Section 3, a

Preparation and Authority. . . . The List of Registered Voters must contain the name and address of each Active Member whose registration is effective on the Voter Registration Deadline Date.

Section 3, a

Preparation and Authority. . . . The List of Registered Voters must contain the name, address and e-mail address of each Active Member.

DEFINITIONS

Active Members: that classification of membership defined in Article II, Section 1(a) of the Bylaws and meeting the Criteria for Active Membership as set forth in Rule I.B. of the Standing Rules. An active member in good standing shall have all the privileges and prerogatives of full membership, including voting, holding office, and serving as the chair of any committee or subcommittee. For the purpose of voting, nominating, holding office, and serving as the chair of any committee or subcommittee, Freelance Members are considered Active Members by the Division.
Definitions

Active Members: that classification of membership defined in Article II, Section 1(a) of the Bylaws and meeting the Criteria for Active Membership as set forth in Rule I.B. of the Standing Rules. An active member in good standing shall have all the privileges and prerogatives of full membership, including voting, holding office, and serving as the chair of any committee or subcommittee.

List of Registered Voters: an alphabetical List of Registered Voters prepared by the Paralegal Division Coordinator on the Voter Registration Deadline Date pursuant to Article IX, Section 3 of the Bylaws.

List of Registered Voters: an alphabetical List of Active members prepared by the Paralegal Division Coordinator pursuant to

Article IX, Section 3 of the Bylaws.

Nominating Period: the 30-day period beginning 15 days after the Voter Registration Deadline Date and ending on the date nominating petitions must be received by the Elections Subcommittees in order for the nominating petitions to be valid.

Nominating Period: the 30-day period beginning February 1 and ending on the date nominating petitions must be received by the Elections Subcommittees in order for the nominating petitions to be valid.

Registered Voter: (i) a person who is an Active Member or a Freelance Member and (ii) a person whose active membership status is reflected in the membership records of the Division on the Voter Registration Deadline Date.

Registered Voter: a person who is an Active Member listed on the official records of the Paralegal Division of the State Bar of Texas no later than two weeks prior to the date of any election.

Voter Registration Deadline Date: (i) the deadline on which all Active Members are eligible to become candidates for the office of Director, nominate candidates for Director and/or vote in a particular election, and (ii) 75 days prior to the Ballot Mailing Date as shown in the timeline prepared by the President Elect. (entire definition deleted)

NOTICE OF NOMINATIONS/ELECTION OF PRESIDENT-ELECT

Pursuant to Standing Rule XIV of the Paralegal Division of the State Bar of Texas, notice is hereby given of an election for the office of 2008-2009 President-Elect. This election will be held by mail during the month of January 2008 by the Board of Directors.

Qualifications for serving as President Elect of the Paralegal Division are contained in Standing Rules XIV as follows:

XIV. OFFICERS

B. ELIGIBILITY

1. Any current or past Director who is currently an Active member of the Division is eligible to be elected as President or President-Elect.

Any qualified individual who is interested in running for office of President Elect should forward a one-page resume, together with a letter of intent to run, to the nominations committee at the following address **NO LATER THAN JANUARY 15, 2008.**

Debbie Oaks Guerra
Dmyterko & Wright, LLC
P.O. Box 270275
Flower Mound, TX 75027
dguerra@dw-partners.com

In the event the Board elects an individual who is currently serving as a Director, a vacancy will be declared in the district in which that individual serves. An election will be held to replace the outgoing Director (President Elect) at the time the elections for the Board of Directors are regularly scheduled.

Immigration Alert

Employers Between a Rock and a Hard Place

By Kathleen Campbell Walker

On August 10, 2007, Homeland Security Secretary, Michael Chertoff, and Commerce Secretary, Carlos Gutierrez, announced measures to improve border security and immigration using existing law. On the same day as this announcement, the Department of Homeland Security ("DHS") issued an early release of the Final Rule concerning the creation of safe harbor procedures for employers who receive a "no match letter" from the Social Security Administration ("SSA") or written notice from DHS that the immigration status or employment authorization document presented by an employee for I-9 purposes is assigned to another person or there is no agency record that the document has been assigned to any person.

These regulations provide that a Social Security no-match letter or DHS notice can serve as potential constructive knowledge that an employer might be continuing to employ an unauthorized worker, which of course can lead to civil and sometimes criminal penalties. The regulations propose a safe harbor procedure so that employers who comply with the procedures can insulate themselves from liability under the Immigration and Nationality Act ("INA"). These procedures do not insulate the employer from liability if they have *actual* knowledge that a worker is not authorized to work in the United States ("U.S."). They also do not insulate the employer from potential EEOC violations. This regulation does not mandate that any employer terminate an employee

upon receipt of a no-match letter from the SSA or a notice from the DHS that the work authorization document presented for I-9 purposes may not belong to the employee who presented it. **Based on a delay in publication, now the regulations became effective September 14, 2007.**

What should an employer do to utilize the safe harbor provisions? According to the regulations, on or after September 9, 2007, when an employer receives a Social Security no-match letter or a letter from the DHS questioning the validity of an employment document presented by an employee for I-9 purposes, an employer will be provided a safe harbor option by this regulation to take in response to receipt of the communication. The safe harbor procedure outlined in the regulation is basically as follows:

1. The employer shall promptly "no later than 30 days after receipt" check its records to insure that the no match or DHS error notice was not the result of a clerical error on the employer's part.
2. If the employer determines that there is no clerical error within the 30 day time frame, then the employer must ask the employee to confirm the accuracy of the employer's records.
3. If necessary, the employer must ask the employee to resolve the issue with SSA or the DHS.
4. If the employer is able to successfully resolve a no match based on a SSA letter, the employer must make sure to have followed all the instructions on

the SSA letter. In addition, the employer should also verify that the correction was made by SSA using the Social Security number verification system ("SSNVS") administered by the SSA, and retain a record of the date and time of the verification completed by the employer. The SSNVS can be accessed through: <http://www.ssa.gov/employer/ssnv.htm> or by telephone at 1-800-772-6270.

5. If none of the previous measures resolves the matter within 90 days of receipt of the letter or notice, then the employer should complete within three days (if they desire to follow the safe harbor procedures), a new I-9 form as if the employee in question were a new hire, except that no document may be used to verify the employee's work authorization that was questioned by the SSA letter or by the DHS notice. If the employer is still unable to confirm whether or not the individual is authorized to work following the procedures, then the employer does risk liability under 6274(a) of the INA, if the employer continues to allow the employee to work for the employer. Please note, however, that this provision does not mandate that the employee be terminated. The employer should obtain legal counsel to provide an assessment of the work authorized status of the individual, if the employer is faced with a decision of termination versus continuation of work in order to document the I-9 file.

Please note that there are many reasons to receive a Social Security no-match letter including transcription errors, name changes due to marriages not reported to the SSA, and errors within the SSA records. The same comment holds true for DHS records. Thus, employers must not assume that an SSA no match letter or DHS notice is a result of any wrong doing on the part of an employee. Further, an employer who takes action against an employee based on just a no match letter or DHS notice may in fact be subject to discrimination charges as well as wrongful termination allegations.

The DHS also provided public notice

today that they have renamed their basic pilot program—the E-Verify program. Information on the E-Verify program may be obtained at www.dhs.gov/E-Verify. E-Verify is a partnership program between the DHS and the SSA. U.S. Citizenship and Immigration Services (“USCIS”) oversees this program. Although E-Verify is not required for determining work eligibility of employees, based on the on-going increase in enforcement efforts across the nation and the continuing exposure of management to criminal charges based on patterns and practices of hiring undocumented workers, it is advisable for employers to consider enrolling in the E-Verify program for new hires.

In addition, on August 31, 2007, the E-Verify program launched a new photo screening tool. This feature will be a first step in providing employers with tools to detect identity theft. This photo screening feature though will only allow employers to check the photos of new hires’ employment authorization documents or permanent resident cards (green cards). Using this system, the employer will be able to compare identical photos, one from the card presented by the employee to the card image in the USCIS database. Please note that employers still cannot mandate that an employee present a specific document under the I-9 regulations to establish identity or work authorization. Thus, this biometric tool is only useful if the employ-

ee elects to provide either the employment authorization document or the legal permanent resident card.

The DHS also announced the following:

We can expect that the civil penalties for knowingly hiring undocumented workers will increase 25% in the near future. This increase must go through the notice process in the *Federal Register* first. This increase would impact civil penalties as follows for offenses occurring post September 29th, 1999:

First offense (8 CFR 6274a.10(b)(1)(ii)(A))
Now: not less than \$275 and not more than \$2,200
Up 25%: not less than \$343.75 and not more than \$2,750

Second offense (8 CFR 6274a.10(b)(1)(ii)(B))
Now: not less than \$2,200 and not more than \$5,500
Up 25%: not less than \$2,750 and not more than \$6,875

Third offense (8 CFR 6274a.10(b)(1)(ii)(C))
Now: not less than \$3,300 and not more than \$11,000
Up 25%: not less than \$4,125 and

more than \$13,750

For failing to comply (8 CFR 6274a.10(b)(2)):
Now: not less than \$110 and not more than \$1,100
Up 25%: not less than \$137.50 and nor more than \$1,375.

In addition, employers can expect that the number of documents used for I-9 identity and work eligibility verification will be decreased from the current 29.

Employers hopefully can also expect that the H-2A agricultural seasonal worker and the H-2B non-agricultural seasonal worker programs’ processing procedures will improve

Further, in the near future, Trade Nafta (“TN”) visas for Mexicans, which can be valid for up to three years, should also be followed by an ability of the applicant to be admitted for three years instead of the current one year period of admission.

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Florence, Italy, April 14-21, 2007

*Sponsored by the Paralegal Division of the State Bar of Texas
Trip Coordinated by American Council for International Studies (ACIS)*

A favorite travel site headlines the five reasons to visit Europe in the spring. The fields of France are ablaze with daisies and poppies. Holland is a riot of tulips and crocuses. Italy’s hillsides are covered with pastel blossoms of pears, cherries and oranges. The weather shifts from blustery to balmy. Housewives fill

their window boxes with geraniums and petunias and the bustling outdoor market vendors spread their wares in the sun again.

Perhaps the best reason to visit Europe in the spring is, well, Europeans. The French enjoy their neighborhood bistros. The British pack traditional pubs for

lunch. The Italians gesture over tiny espressos.

Destination: Florence, Italy

Settled by the Etruscans, Florence sprang to life as a Roman colony in 59 B.C. Wool, textiles and a powerful banking sector was the basic economy making

it a wealthy city. With the wealth came the artists who were commissioned to decorate and create fabulous works of art and architecture.

The Dallas, Houston, Midland and Austin groups converged in Chicago and 23 passengers boarded Alitalia Airlines bound for Florence, Italy. The stories were true! Alitalia begins serving wine with the first meal served shortly after we were airborne and then it was open bar the rest of the trip to Italy! We flew approximately 7,000 miles at speeds averaging 940 mph. As the sun came up, we were directly over the Alps—the most amazing sight anyone could ever see—so much white, glistening snow!!

We arrived early in Milan and while waiting for our flight to Florence we made new friends and renewed old friendships. We arrived in Florence at 11:15 a.m. where a coach was waiting to take us to our Hotel Donatello. After depositing our luggage (one bag per person—we intended to travel light), we scattered to explore and enjoy lunch at the various corner cafes. While eating our sandwiches, we watched a crowd of people in heated argument. They were Gypsies. Our waitress told us to “be careful.” We would later see them everywhere in the city begging and asking for handouts. Of course, the shopping began immediately because there was an outdoor antiques market in the plaza across the street from our hotel. After lunch, our dedicated tour guide Chris Renton took us on a quick walking tour of the city to get us oriented. We walked through the Central Market. Lots of wares for sale at a “good price” each vendor would say. After more orientation by Chris, we headed out for dinner at Gianni-no’s in San Lorenzo where we dined on authentic Italian cuisine. We walked back to our hotel and crashed. By then most of us had been awake about 36 hours!

We enjoyed a continental breakfast at the hotel at 7:30 a.m. Eager to get going, we did a three hour walking tour with a guide named Simona using headphones to keep us all together and explain the sights. (I later learned these devices are called “Whispers.”) We visited San Lorenzo church where tombs of the Medici family and those of famous people are contained.

Gallileo, who invented the telescope, is there. There is a tomb for Michelangelo, but he is actually buried elsewhere. We went to Ponte Vecchio, the famous bridge over the Arno River where many upscale jewelry shops line the bridge. Simona pointed out many palaces along the way that had belonged to the Medici family, bearing the family crest. The Medici family was a hugely wealthy pharmaceutical and banking family who had ruled for almost three centuries. By 1737, the family had died out leaving the city under Austrian, and briefly Napoleonic, control until the Italian Unification in 1860. Simona took us to the Mercato del Porcellino, the “Pig Market” where we all rubbed the nose of a very large bronze pig. The legend says if you do so, you will return to Florence one day.

We went to the Piazza della Signoria where there stands a copy of the David, along with numerous marble statues carved by many famous artists and sculptors. This plaza was the heart of political life for centuries.

Lunch was on our own—we chose a quaint little café on the piazza. We had a cute waiter named Claudio who gave us a few small lessons on the lingo. Then shopping!! Chris arranged for a tour of a leather factory named Misuri which included a presentation on the various leathers and gold for which Italy is famous and taught us how to judge the quality thereof. I think we all did some shopping at Misuri or at least in the square outside. (Good marketing technique!) At 5:30 p.m. we met Chris and toured Ognissanti, a very old church with frescoes—still in use—Americus Vespuci Church—Church of All Saints. Then we strolled back to our hotel past designer shops like Versace and Ferragamo. We met at the hotel’s courtyard for wine and cheese to make our plans for the next adventure and to see what bargains everyone had found. We had already hit the markets for snacks and, did I mention, wine.

The next day with Simona again as our guide, we toured Accademia and Santa Maria Novella, a Gothic Middle Ages style church. Outside there were two obelisks where they had had horse races long ago. The Gothic arches in the church meant

that you were brought closer to God. The Renaissance brought many changes, one of which was perspective in art. In this church, we saw the first of that movement.

Lunch at a sidewalk café—cost us 2 Euros each to sit down (we had been warned by Chris). We ordered a good lasagne, bland bread (needed the dipping olive oil!). Upstairs adventure—a unisex bathroom—no locks. Ever tried holding the door shut with your right foot, balancing on the left foot and hoping your purse that was dangling from a hook outside the window would stay put? And trying to remember how to say “occupied” in Italian?

That afternoon we toured the Pitti Palace and the Boboli Gardens. Everything in Italy we discovered involved a climb. The palace was filled with art treasures—Raphael, Van Dyke, Reuben, Titian—so awesome to be so close to the real paintings I had studied Art History in college (I’d intended to be an art teacher—never to work in the legal field). Inside the palace was the apartment Napoleon had used. The immense bathroom contained an elaborate bathtub! Outside, the Boboli Gardens are an excellent example of Renaissance gardening which was opened to the public in 1766. The gardens were laid out by the Medici family after they had purchased the palace from the bankrupt Pitti family in 1549. The difficult climb was worth it—at the top was a building containing the china and serving pieces used in the palace throughout the centuries and a view of the city that was breathtaking! We left the palace and began our walk back to the hotel by way of the designer district again—Murano glass, Prada, etc. We had gelato for dinner! That had become a favorite. By now we began to search for a taxi, but none were to be found, so we walked, and we walked, and we walked—by now we had been walking about 12 hours.

When we got to the hotel, we fashioned a delightful foot soak!!

Wednesday—Train to Rome

While half of us went to Venice, the rest went to Rome for the day. The rest left early from our hotel—walked to the train station and boarded a fast, electric



train for Rome. Arriving in Rome, we took the Metro to the Vatican—toured the Vatican Museum, Sistine Chapel and shared the spaces with thousands of people—tourists and pilgrims from all of the world!! A vast area!! We ate pizza (again) lunch at the Vatican Museum and then went to St. Peter's Basilica—the largest church in the world. We saw the Hall of Maps—tapestries depicting early areas controlled by the Church and two halls of huge tapestries depicting Bible stories. These were delightful surprises! We saw where St. Peter is buried, thus the center of the Christian world. The massive church contains markers of other cathedrals around the world comparing St. Peter's to Notre Dame, and others—they can fit *inside* St. Peter's! One of the main attractions inside the basilica is Michelangelo's Pietà which was created in 1499 when Michelangelo was only 25.

We then took a city bus to ancient

Rome. At the “wedding cake building” we walked up lots of steps—at top we looked down on the ruins of ancient Rome! Across the street was the building that had been Mussolini's headquarters during the war. We walked down into the Roman forum and through the ruins. We saw the senate building where Julius Caesar was killed. There were layers of ruins currently in excavation. There were houses lining the hill which once had housed the rich noblemen of Rome. We saw the Colosseum Cats—there is a society to collect money to feed these cats—they had a table set up for contributions. Then there was the Colosseum! Massive!! Held 70,000 people—each level had its own entry so the rich did not have to mix with the more common people. We then took a city bus to the train station—much to Chris's chagrin we did not have time to do the Trevi Fountain or the Spanish Steps, but we assured him we had had a marvelous day

and not to worry!! We wanted to be at the train station on time! At the train station we grabbed a sandwich and ate on the train back to Florence.

Thursday—off to Tuscany!

A tour bus picked us up and off we went—into the most beautiful countryside you can ever imagine! It looked just like the movies. Our destination was San Gimignano. The village is ancient, dating back to year 1000—The Collegiate Church of San Gimignano was built 1000-1056 and consecrated in 1148 by the Pope. Although more primitive, the frescoes were outstanding! Every book of the Bible was illustrated around the walls and ceiling of the church. Some of us had a delightful lunch at the sidewalk cafes. Others of us shopped and shopped. We departed mid afternoon for wine tasting and olive oil tasting.

We drove through Tuscany into Chi-

anti listening to Italian opera and looking at the wonderful countryside villas. (We learned we could rent a villa that would house 8 people for about \$2,500 Euros a week—not a bad deal!) We ended the day at a delightful family owned vineyard and winery called Volpaio. There we were treated to a tour of the winery and a tour of the making of olive oil. The wine is aged 4 years, but can be sold for 20 years. In 1960 the owner had been given a 2/3 ownership in the winery as a wedding present. It has a population of 50 consisting of family and close friends and 5000 olive trees. They get approximately one liter from one tree (equal to 3 cans of Coke.) In November, olives are picked by hand, always green, washed and put in a machine to dry. Once granite stone was used to crush—now electric centrifuge is used leaving pits inside, then pulp goes to a machine where oil is extracted from pulp. There is no pressing—very gentle—7,000 small blades into pulp pick up small amounts of oil on blade, centrifuge spins to extract rest of oil. They use virgin wood

to filter oil and a stainless steel container to hold the oil. After frost in 1985 there were only 70 trees left. They had to replant trees and it takes 5–6 years to produce from trees—very little is exported.

Wine lesson: It gets color and softness from skin—first fermentation goes from sugar to alcohol—2nd fermentation—10 days—acids turned into wooden barrels—large and small depending upon type of wine. Oak barrels from France or Slavonia are used. Volpaio made its first wine in 1969. Barrels must be shaved inside every 8 barrels. Barrels can be used for 40 years. Volpaio produces 250,000 bottles per year. It is a moderate size producer. The size of vineyards equals 60 soccer fields. People come annually to test the wine. If wine is good enough, it gets a pink label on the neck of the bottle. Six hundred bottles are produced of Chianti Classico. You often see wild boar on menus, there are many wild boars in the forests. Vineyards must have electric fences around the vineyards to keep the boars away. They also plant roses between vines to attract insects away

from grapes. It takes 5–10 years to establish vines.

Last day! We visited San Marco Church, a Dominican church and convent. Fr. Angelico and Renaissance artist Versachio had decorated the cloisters and convent. “The Annunciation” is the most famous work in this church.

Shopping again at the pig market!! We had to hurry!

We toured the Uffizzi Gallery at 4:00—Botticelli’s “Venus” is among the other masterpieces inside. It is the second largest art gallery in the world, the Louvre in Paris is the largest. Even though we had reservations, it was very crowded! We departed and took a City Bus to Michelangelo Park above the city with a fantastic view of the city and a view of the mountain where Leonard’s friend tried to fly with wooden wings and a view of the tower where Gallileo tried out his telescope. We had a farewell party complete with all the good wines, cheese, bread and olive oil made famous by this fabulous country!

Legislative Updates 2007

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

The following is a very brief synopsis of some of the significant legal developments in Texas during the year. This summary is not exhaustive in either the topics included nor the breadth of scope of changes to each topic, but will provide some general information in areas of interest to paralegals.

Here come the judges

S.B. 1951

Creates 11 new district courts:

1. El Paso County Criminal District

Court No. 1 (effective September 1, 2007)

2. 418th District Court (Montgomery

County) (effective September 1, 2007)

3. 435th District Court (Montgomery

County) (effective September 1, 2007)

4. 444th District Court (Cameron

County) (effective September 1, 2007)

5. 445th District Court (Cameron

County) (effective September 1, 2007)

6. 448th District Court (El Paso Coun-

ty) (effective September 1, 2007)

7. 449th District Court (Hidalgo Coun-

ty) (effective September 1, 2007)

8. 506th District Court (Grimes and

Waller counties) (effective September 1, 2007)

9. 397th District Court (Grayson County) (effective September 15, 2008)

10. 423rd District Court (Bastrop County) (effective October 1, 2007)

11. 429th District Court (Collin County) (effective January 1, 2009)

This bill also reduces the number of counties served by four existing district courts:

9th District Court will serve only Montgomery County (effective September 1, 2007)

278th District Court will serve only Leon, Madison, and Walker counties (effective September 1, 2008)

6th District Court will serve only Lamar and Red River counties (effective January 1, 2010)

336th District Court will serve only Fannin

County (effective January 1, 2010)

Legislation established six additional county courts at law:

H.B. 682 creates Montgomery County Court at Law No. 5

H.B. 4008 creates El Paso County Criminal Courts at Law No. 3 and No. 4, which will have the criminal jurisdiction of a statutory criminal court. Court No. 4 will give preference to criminal offenses involving family violence.

H.B. 4139 creates Van Zandt County Court at Law (effective January 1, 2011)

S.B. 660 creates Travis County Court at Law No. 8, which will give preference to criminal cases (effective January 1, 2008)

S.B. 2018 creates Hunt County Court at Law No. 2

There's no place like home, ...except more child support and personal identity

"King of the Castle" Bill

S.B. 378

In 1973, the Legislature amended the Penal Code to permit the use of deadly

force only if a reasonable person in the situation would not have retreated. In 1995, the Legislature provided that a person had no such duty to retreat if the person was in his home. S.B. 378 expands the "no retreat" concept to a person's place of business and vehicle and provides for a presumption of reasonableness for a person's belief that the use of force or deadly force is reasonable if the actor did not provoke the other person and was not engaged in criminal activity (excluding traffic offenses) and knew or had reason to believe that the person against whom force or deadly force was used: 1) unlawfully and with force entered or was trying to enter that person's home, vehicle or place of business or employment; 2) unlawfully and with force removed or was trying to remove that person from the person's home, vehicle or place of business or employment; or 3) was committing or trying to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

In addition, a person who has a right to be present at the location where the force is used, who has not provoked the person against whom the force is used, and who is

not engaged in criminal activity (excluding traffic offenses) at the time the force is used is not required to retreat before using force. S.B. 378 further establishes that a finder of fact may not consider whether the actor failed to retreat when determining whether the actor reasonably believed the use of deadly force was necessary.

The last section of the bill provides for civil immunity for a defendant who uses force or deadly force that is justified under Chapter 9 of the Penal Code.

Filings in County Real Estate Records

H.B. 732

H.B. 732 resolves concerns that Texas county clerks have had on whether faxed, emailed or photocopied documents can be filed in their real estate records. Chapter 12 of the Property Code was amended to prohibit a paper document concerning real or personal property from being recorded or serving as notice of a paper document unless the paper document contains an original signature that is acknowledged, sworn to with the proper jurat, or proved according to law, or unless the document is attached as an exhibit to a paper affidavit that has an original signature that is



acknowledged, sworn to with the proper jurat, or proved according to law. Original signatures are not required for electronic instruments or other documents that comply with Chapter 15 of the Property Code, Chapter 195 of the Local Government Code, Chapter 43 of the Texas Business & Commerce Code, or other applicable law.

Child Support Cap Increased

After more than a decade, the child support “cap” has been increased from \$6,000 per month (net resources) to \$7,500 per month (net resources). In addition to the cap increase, new Section 154.125 provides that the cap will be adjusted every six years for inflation. The next adjustment will take effect September 1, 2013.

Liability of County and District Clerk Disclosure

H.B. 2061—effective March 28, 2007

H.B. 2061 was adopted by the Legislature to address an opinion released by Attorney General Greg Abbott requiring county and district clerks to redact Social Security numbers from documents that are available to the public on the Internet. The opinion also provided that releasing documents without editing the Social Security numbers would make clerks subject to criminal liabilities under state law. Clerks around the state reacted to the opinion by limiting access to public records, citing that they do not have the resources to redact every Social Security number present. H.B. 2061 addresses these issues by providing county clerks are not liable for disclosing a document filed with the county or district clerk that contains a Social Security number. Additionally, the bill requires an individual to provide a written request to have all but the last four digits of the Social Security number removed. Finally, the bill requires clerks to accept documents for filing even if the Social Security number is displayed and the clerk is not required to confirm that a Social Security number has been redacted from a document.

Notices of Identity Theft To Check Verification Entities

H.B. 2002—effective September 1, 2007

H.B. 2002 requires a financial institution to offer its customers the option of having it notify check verification entities that a customer has been the victim of identify theft with respect to an identified account at the financial institution. The bill provides for a secure electronic notification system to convey specified information concerning the customer and the account. The customer may also notify the check verification entity directly. A check verification entity may not approve a check or sight order purportedly issued by the customer and drawn on the identified account if it has received notification through the electronic notification system or if the customer presents certain information to the entity. While the effective date of the bill is September 1, 2007, a financial institution is not required to comply with the new provisions until March 1, 2008.

Say, “Ahhh....”

Regulating the Practice of Dentistry

H.B. 3876—effective September 1, 2007

Under current law, the State Board of Dental Examiners regulates licensed dentists but has limited authority over dental clinics that employ dentists to perform dental services. This limited jurisdiction prevents dentists from obtaining patient records, which, in turn, prevents the board from investigating complaints from the public and hinders dentists’ ability to answer questions regarding the care provided to their patients.

The new law makes a significant change to proceedings in a suit involving a health care liability claim against a dentist for injury or death to a patient. The bill authorizes any entity providing dental services to designate a dental custodian of records who will provide records to the board or to a dentist who has provided dental treatment and to comply with other laws regarding dental patient records.

The new law also makes a significant procedural change to health care liability lawsuits against a dentist by prohibiting a member of the board from serving as an expert witness in a suit unless the member receives approval of the dental board or executive committee.

While you’re out driving

“Obscured License Plate” Bill

S.B. 369

The Court of Criminal Appeals recently stated that a motorist is in violation of the law if any part of the motorist’s license is obscured. S.B. 369 clarifies that a vehicle is not in violation of the state in which the vehicle is registered and the license plate number are not obscured or altered.

Red-Light Cameras

S.B. 1119—effective September 1, 2007

Although red-light camera systems have been popping up in major Texas cities, current law does not address or regulate their use. Additionally, the use of such systems by municipalities has been criticized by the media and members of the public as a way to generate money rather than enhance public safety. S.B. 1119 addresses these issues and creates guidelines for red-light camera use by municipalities. S.B. 1119 establishes the statutory framework under which red-light camera systems will operate to ensure the system is not being used as a source to generate revenue. The bill restricts contracts between municipalities and vendors so that compensation is not based on the number of citations issued. Also, the new law requires a traffic engineering study to include a history of accidents, frequency of red-light violations, and similar traffic engineering and safety criteria to be conducted prior to camera placement in a particular area.

Automobile Premium Surcharge

Prior to this legislative session, an automobile insurer was allowed to assess a premium surcharge at the time an insurance policy is renewed if the insured has filed one or more claims in the preceding three policy years. This has been changed to provide that the insured must have filed two or more claims in the preceding three policy years before a premium surcharge can be assessed.

Refund of Excessive or Unfairly Discriminatory Premiums For Automobile Insurance or Residential Property Insurance

If the insurance commissioner deter-

mines that an insurance company has charged a rate for personal automobile insurance or residential property insurance that is excessive or unfairly discriminatory, the commissioner may order the

company to refund directly to each affected policyholder the portion of the premium that is excessive or unfairly discriminatory as well as pay interest on that amount. The rate of interest assessed is the

lesser of 18 percent or the sum of 6 percent plus the prime rate for the calendar year in which the commissioner's order is issued.

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Texas Forum XXV

The Silver Forum—Testing Paralegal Education after 25 Years

The twenty-fifth annual Texas Forum was held at the Hilton Garden Inn in Austin on November 9, 2007. The Paralegal Standing Committee of the State Bar of Texas (“PC”) sponsors this event each fall, and attendees include members of the PC, the Board of Directors of the Paralegal Division (the “Division”), and paralegal educators from around the state. The topic of this year’s Forum was “Testing Paralegal Education after 25 Years.”

The main focus of this Forum was educating and preparing paralegals for the marketplace and the topics were discussed in panel format. The first discussion was moderated by Patricia Giuliano, President of the Paralegal Division, and an intellectual property paralegal with Cox Smith Matthews Incorporated. The Division’s panel discussion was entitled “Education and Training for Entry-Level Paralegals” and the panel was made up of two paralegals and two people from the law office management side. The paralegal panel members were Stephanie Hawkes, RP, of Nissan North America, Inc., and Cheryl Bryan, CP of Orgain, Bell & Tucker, LLP.



Patricia Giuliano, President of the Paralegal Division

The administrator representatives were Toni Beasley, president of the Association of Legal Administrators, Austin-Central Texas Chapter, and Office Administrator with Andrews Kurth, LLP, and Chistine Bhamani, Human Resources Manager with Brown McCarroll, LLP. The questions focused on what working paralegals and legal administrators see as areas on which educators could place more emphasis to help new graduates more quickly assimilate into the workplace, and areas where schools are excelling in educating new paralegals.

The second panel discussion was moderated by Lynn Crossett, J.D., the Director

of the Legal Studies Program at Texas State University in San Marcos. Dr. Crossett’s panel was made up of educators and directors of paralegal programs. Michele Jura, J.D. is the Paralegal Program Director for the San Antonio’s Center for Professional Excellence at the UTSA campus, Edward B. Quist J.D., a tenured faculty member and Paralegal Program Coordinator at Lamar State College—Port Arthur, Jeffrey B. Robb, J.D., Director of Legal Studies and Associate Professor in the History and Government Department

at Texas Women’s University, and Tandy Schoolcraft, J.D., who is the Director of the Paralegal Program at San Antonio College. This panel provided information regarding the structure and content of their respective programs, the types of degrees offered, the required courses, electives offered, how legal research and writing skills are taught, practice tips, internships, and student placement opportunities.

These presentations were followed by a combined networking lunch and then individual break-outs sessions of the PC and Texas Paralegal Educators.

Scruples

Ethical Considerations in the Workplace

Laurie Borski

Working for a provider of legal services, whether a lawyer, law firm or other organization, may present ethical situations that are not directly related to the tasks performed or the legal services provided. Working in an office setting certainly provides an opportunity for the ethical paralegal to lead by example. On the other hand, an office setting can also present unique ethical challenges. Obviously, the ethical atmosphere of a firm or organization influences the conduct of its lawyers.¹ It should also be recognized that this ethical atmosphere has an influence on the ethical conduct of the staff.

A paralegal may be placed in an ethical situation in which it is unclear what, if any, action should be taken. The situation may involve the actions of others or only the paralegal. While some may prefer to ignore the actions of others in certain types of ethical situations unless they feel they are directly impacted, others may find it helpful to know what might be required in these situations.

Three ethical scenarios are presented with possible solutions. These situations have been drawn from among those presented to the Professional Ethics Chair for direction over the last several years and which seem to occur frequently. You may have encountered one or more of these situations in your personal experience. The guidance offered herein is drawn from of the Texas Disciplinary Rules of Professional Conduct (the "Rules").

The Rules state that the ethical conduct

of those employed by or providing legal services under the supervision of a licensed attorney is to be "compatible with the professional obligations of the lawyer."² Additionally, the Code of Ethics and Professional Responsibility of the Paralegal Division of the State Bar of Texas states that: "[a]lthough the Code of Professional Responsibility of the State Bar of Texas does not directly govern paralegals except through a supervising attorney, it is incumbent upon the members of the Paralegal Division to know the provisions of the attorneys' code and avoid any action which might involve an attorney in a violation of that code or even the appearance of professional impropriety."³

Scenario One:

A coworker routinely arrives late to the office and leaves early. Yet, when the monthly hours for paralegals are published, the number of hours this person has billed is equal to or greater than those of the paralegals who are routinely in the office during regular business hours.

The first consideration to be made in this ethical scenario is whether you really know how many hours were worked and billed by the coworker. Are you truly aware of the work this paralegal accomplished during a given day or month? Perhaps the paralegal takes work home, comes in to the office to work on weekends, or chooses to work through the lunch hour on billable projects rather taking a break. Do you know whether the paralegal has an

arrangement with the supervising attorney or is permitted under company policy to work at or from home on certain projects? If you cannot answer these questions affirmatively, any action on your part would be speculative.

However, if you know for certain that the coworker in question is exaggerating the amount of billable time being charged to a client, you are obligated to report your concerns to your supervising attorney.

The Texas Disciplinary Rules of Professional Conduct state "[a] lawyer in good conscience should not charge or collect more than a reasonable fee, although he may charge less or no fee at all."⁴ Clearly, exaggerating the amount of billable time worked is not only charging "more than a reasonable fee" but it may also violate the fee arrangement agreed to by the client.

The Rules also state that: "[o]nce a fee arrangement is agreed to, a lawyer should not handle the matter so as to further the lawyer's financial interests to the detriment of the client. For example, a lawyer should not abuse a fee arrangement based primarily on hourly charges by using wasteful procedures."⁵ If the supervising attorney was aware that fee exaggeration was occurring, he take the steps necessary to ensure that the client was not unfairly billed.

The paralegal that "puffs" billable hours also places a burden on the supervising attorney with respect to an invoice's description of work performed. The Rules state "[a] lawyer entitled to a fee necessarily must be permitted to prove the services rendered in an action to collect it."⁶ Although this specific reference is found in the section that deals with client confidentiality, it could also apply to the supervising attorney's ability to justify legal fees billed either to the client or to the court in the event of an award of attorney's fees.

Scenario Two:

A paralegal finds the workload has become more than can be effectively and responsibly handled by one person. The quantity of incoming work has reached the point where the paralegal may feel that not only can the tasks not be performed within a reasonable period of time, but also that important deadlines may be missed because the paralegal is simply not aware of everything con-

tained in the towering in-box. To compound the problem, the paralegal feels there are no other paralegals or associates with available time to assist.

In this situation there is no doubt that the paralegal has an ethical obligation to inform the supervising attorney that the work assigned cannot be accomplished in a timely manner. The paralegal also has an ethical obligation to inform the supervising attorney if there is a possibility that deadlines may be missed or that deadlines are not being properly calendared or docketed due to an overwhelming flow of work.

The Rules provide that a lawyer has a duty to provide competent and diligent representation to his client:

Having accepted employment, a lawyer should act with competence, commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf. A lawyer should feel a moral or professional obligation to pursue a matter on behalf of a client with reasonable diligence and promptness despite opposition, obstruction or personal inconvenience to the lawyer. A lawyer's workload should be controlled so that each matter can be handled with diligence and competence.⁷

The Rules also state that:

Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Under paragraph (b), a lawyer is subject to professional discipline for neglecting a particular legal matter as well as for frequent failures to carry out fully the obligations owed to one or more clients. A lawyer who acts in good faith is not subject to discipline, under those provisions for an isolat-

ed inadvertent or unskilled act or omission, tactical error, or error of judgment. Because delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness, there is a duty to communicate reasonably with clients; see Rule 1.03.⁸

In this respect, the Rules define "neglect" as "inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients."⁹ If the situation is a temporary one, it should be addressed even though by definition legal matters are not being neglected.

Whether some of the work can be assigned to other employees of the firm or organization is a management decision. The paralegal should certainly cooperate with management in trying to find the best workable solution to the problem.

Scenario Three:

A coworker is observed engaging in improper behavior at the office such that the coworker would be subject to immediate dismissal if attorneys or management were aware of the behavior.

Let us assume that this situation does not address minor grievances or personality conflicts but illegal or unethical behavior or serious crime. The Rules define "serious crime" as:

barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.¹⁰

An ethical situation involving "serious crime" must be reported to the supervising attorney. In doing so, the paralegal must disclose any situation where it is possible that the complained of employee might retaliate against the paralegal for reporting the situation.

There should be a common sense approach in determining the seriousness of unethical behavior before reporting it.

You may be excused from reporting that a coworker made a copy of his child's book report even though making copies on the firm dime qualifies as theft. But you may have an obligation to report behavior that could expose the firm to liability, such as if it were discovered that an employee who claimed an on-the-job injury was doing so fraudulently or if nonlawyers were drinking alcoholic beverages on firm premises after hours without permission.

Paralegals have a duty and obligation to maintain a high standard of ethical conduct that reflects on the profession as well as the legal system. The United States is a society of laws. As paralegals we help serve as guardians of those laws and, in doing so, preserve society.

Do you have a question regarding paralegal ethics? Send it to ethics@txpd.org.

¹ See Comment 7 to Rule 5.01, *Responsibilities of a Partner or Supervisory Lawyer*, Tex. Disciplinary R. Prof. Conduct.

² See , Rule 5.03, *Responsibilities Regarding Nonlawyer Assistants*, Tex. Disciplinary R. Prof. Conduct.

³ See Code of Ethics and Professional Responsibility of the Paralegal Division of the State Bar of Texas.

⁴ See Comment 1 to Rule 1.04, *Fees*, Tex. Disciplinary R. Prof. Conduct.

⁵ See Comment 6 to Rule 1.04, *Fees*, Tex. Disciplinary R. Prof. Conduct.

⁶ See Comment 15 to Rule 1.05, *Confidentiality of Information*, Tex. Disciplinary R. Prof. Conduct.

⁷ See , Comment 6 to Rule 1.01 *Competent and Diligent Representation*, Tex. Disciplinary R. Prof. Conduct.

⁸ See , Comment 7 to Rule 1.01 *Competent and Diligent Representation*, Tex. Disciplinary R. Prof. Conduct.

⁹ See , Rule 1.01(c), *Competent and Diligent Representation*, Tex. Disciplinary R. Prof. Conduct.

¹⁰ See , Rule 8.04(b), *Misconduct*, Tex. Disciplinary R. Prof. Conduct.

Laurie Borski is former Chair of the Professional Ethics Committee of the Paralegal Division and served on the Division's Paralegal Ethics Handbook Committee. She has also served on the Annual Meeting and Election Committees and is a past president of the Alamo Area Paralegal Association in San Antonio.

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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:

On January 5, 2006, President Bush signed into law H.R. 3402, the “Violence Against Women and Department of Justice Reauthorization Act of 2005.” Section 113 of H.R. 3402 amended 47 U.S.C. 6 223. The relevant language of Section 223 now provides that “[w]hoever...utilizes any device or software that can be used to originate telecommunications or other types of communications that are transmitted, in whole or in part, by the Internet... without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person...who receives the communications...shall be fined under title 18 or imprisoned not more than two years, or both.”

Essentially, this means that if you use a fictional name or otherwise attempt to anonymously send an e-mail or post a blog that you know will “annoy” others, you can go to jail or be fined, or both. Do you believe this law is a serious infringement of

our First Amendment right of free speech?

(The entire text of 47 U.S.C.

223(a)(1)(C) and the amendments to 47 U.S.C. 223(h)(1) can be viewed at <http://people.delphiforums.com/Nursevic/eannoy/eannoy2.html>; a C\Net News.com article discussing the amendment is at http://www.news.com/Create-an-e-annoyance,-go-to-jail/2010-1028_3-6022491.html.)

RESPONSE: The inclusion of the word “annoy” may put this law into violation of free speech territory. If they left it just at “abuse, threaten or harass” then free speech might not be so much of an issue. “Annoy” is very broad and general, to make it even more problematical. Almost everything we say annoys someone, somewhere, somehow, at some point in time. It might be nice to have a constitutional right not to be annoyed, but I know of nowhere in the Constitution or in case law or in statute that says that we do.

Free speech is protected even if it is offensive or disgusting—good discussion of that in *Texas v. Johnson*, 491 U.S. 397.

—*Mary K La Rue, El Paso*

RESPONSE: No, this law is not an infringement of the First Amendment; this law is very welcome.

—*Linda Asteris, Beaumont*

RESPONSE: In response to whether the above-captioned law violates our constitutional right to free speech, I believe that it does. There are already civil remedies that can be utilized if someone is harrasing another person. I do not believe that it should be a criminal offense unless the conduct amounts to terrorism or stalking.

—*Grace Duplesses, C.L.A., Corpus Christi*

RESPONSE: I do not think it is an infringement on my 1st amendment rights,

and would welcome a way to stop the unwanted filthy spam e-mails of a highly sexual content. I don't know where they are coming from and they do not contain any “unsubscribe” information to stop it. The e-mails are offensive and disgusting. It is a violation of MY RIGHTS to be subjected to them.

—*Patti Claar, TBLS, Plano*

RESPONSE: This law is constitutionally problematic. Perhaps what is most troubling is this begged underlying question: When is speech that's intended to annoy the recipient protected by the First Amendment? Since the statute is so vague, drawing no distinction between what constitutes protected annoying anonymous speech and what constitutes unprotected annoying anonymous speech, anonymous blog posters do not know what they may or may not safely say. It's as if Congress enacted a slew of speech restrictions but attached an “except if the First Amendment prohibits this” to them.

Furthermore, it would have helped to define “annoying” and “telecommunications device” clearly to avoid ambiguity. If politicians wanted to limit the law to VoIP, they could have followed what they did in other bills and actually used that term. They could have also limited the “annoy” requirement to contacting an individual person.

But this didn't happen. Instead, the law covers any types of “communications that are transmitted, in whole or in part, by the Internet”—not just VoIP conversations. Also, it covers any person “who receives the communications” rather than a narrower definition that could have been written as “an individual intentionally targeted as the recipient of the communications.”

At the very least, Congress has a duty to clear things up and fix the ambiguities in this law, since it probably violates the free speech rights of all Americans guaranteed under the First Amendment and, most likely, will be declared unconstitutional if someone actually tries to enforce it.

—*Kim Messeri, McKinney*

Should You Fund a 529 with UGMA/UTMA Assets?

Craig Hackler, Financial Advisor, Raymond James Financial Services

If you're using an UGMA or UTMA account to save for a child's college education, you may consider transferring all or part of those assets to a 529 plan. Converting a taxable account (UGMA/UTMA) to a tax-deferred and potentially tax-free investment vehicle (529) may expedite asset growth and help meet the ever-increasing cost of a child's higher education.

An UGMA/UTMA does not involve the same tax benefits as 529 plans. In an UGMA/UTMA, earnings above \$850 are taxed at the child's rate when the child is 18 or older (the first \$850 is exempt). Prior to that age, the iKiddie Tax¹ rules apply. These rules allow the first \$850 of earnings to be exempt. The next \$850 is taxed at the child's rate, and earnings in excess of \$1,700 are taxed at the parent's rate. Once an UGMA/UTMA is converted to a 529 plan, earnings grow tax-deferred and distributions are tax-free* from federal and most state income tax if used for qualified higher education expenses. Some states also offer state tax deductions for contributions to in-state 529 plans.

Besides the tax benefits, it is important to consider several other implications of an UGMA/UTMA-to-529 transfer. First, assets in the original UGMA/UTMA account must be liquidated before contributing to a 529 plan. This could trigger capital gains or other tax consequences. Also, 529 plans funded by UGMA/UTMA accounts retain certain characteristics of an UGMA/UTMA while foregoing some benefits of 529 plans. For example, a regular 529 account allows the account owner to:



- Control assets no matter the beneficiary's age
- Consider plan assets as his or her own for financial aid purposes
- Change the beneficiary at any time
- Withdraw plan assets for any reason

However, with a 529-UGMA/UTMA² account,

- The beneficiary gains control of the assets at age of majority
- The account is still considered the beneficiary's asset for financial aid
- The account owner cannot change the beneficiary
- Withdrawals can only be used for the beneficiary as specified under the UGMA/UTMA statute.

Therefore, the tax advantages of a 529 plan should be the main reason for moving UGMA/UTMA assets.

Another thing to keep in mind is that

the purpose of 529 plans is to provide a savings place for higher education. Expenses such as the cost of braces, high-school supplies or any other pre-college expense will not be paid for by the 529 without taxation and a 10% penalty on earnings. As such, the custodian may want to leave the portion of UGMA/UTMA assets meant for pre-college expenses in the account and only transfer the amount meant for college costs to a 529 plan. If the custodian plans on making additional contributions in the future (contributions intended for college expenses), a new account separate from the 529-UGMA/UTMA should be opened in order to take advantage of all the benefits that a 529 offers.

Of course, this brief article is no substitute for a careful consideration of all of the advantages and disadvantages of this matter in light of your unique personal situation. Before implementing any significant tax or financial planning strategy, consult your financial planner, attorney or tax advisor as appropriate.

* Withdrawals for qualified education expenses became federally tax-free effective January 1, 2002.

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



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