

SPRING 2008 VOL. 13 NO. 4

Texas Paralegal Journal

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PRESIDENT'S *Message*

Patricia J. Giuliano

Do you sometimes find yourself thinking that maybe you were meant to be doing something different—something, say, a little more fulfilling? Is your career missing its “zing?” If you are shaking your head in agreement at this point, then maybe *pro bono* work is for you. There are many misunderstandings about what *pro bono* work is, but simply put, it’s the provision of services without compensation to further a public good.

The Paralegal Division has a long tradition of supporting *pro bono* service. Recently, our members have assisted Legal Aid of Northwest Texas, The Innocence Project of Texas, Texas RioGrande Legal Aid, CASA, and numerous other organizations. In Dallas, a *pro bono* “fair” was organized to bring attention to the various opportunities available in the Dallas area and similar events are being planned in other areas of the state.

If you are not aware of how to get involved, you can start by looking in the *TPJ* where the Division publishes information about how and where to volunteer. Recently we added a page to our website where we list *pro bono* opportunities by county. Also, in recognition that not all paralegals have the opportunity to partner with their own attorneys in the offering of *pro bono* services, the Paralegal Division is working with Texas Lawyer’s Care to establish a “matching” program. It is hoped that we will be able to provide a place where willing paralegals can be matched with attorneys to increase the availability of legal services to those in need. We will keep you posted on this program as we are working to establish guidelines to protect attorneys, parale-

gals, and the clients we will serve in this program.

As many of you know, in 1996 the Paralegal Division established the “Exceptional *Pro Bono* Service Award” which highlights the contributions of one of our members each year. Nominations are solicited from around the state and presentation of the award takes place at our Annual Meeting, with the recipient’s efforts also profiled in the *TPJ*. The Division’s first *pro bono* award was presented to Patricia Hammer of Fort Worth, and this past year we marked the 10th anniversary of the award with Jena Parker (also of Fort Worth) being honored for her work with The Innocence Project. If you know of someone whose efforts are deserving of recognition, please go to our website and look under the Membership tab, select Pro Bono Award, fill out the nomination form and then send it in.

Okay, many of you are probably thinking that you barely had time to read this article much less get involved in another program. However, consider that *pro bono* work is the ultimate in the concept of giving and receiving; you provide assistance to someone who needs help getting through the legal system, while improving your legal knowledge and skills. You’re being given the opportunity to contribute to your community in a way that can boost your confidence with the knowl-



edge you attain through your service.

Jim Sales, the chair of the Texas Access to Justice Commission, reminds us that lawyers are uniquely qualified to provide *pro bono* legal services to the poor. With the help of enthusiastic paralegals we can greatly

increase the number served. Whether you’re working at a legal aid clinic, getting involved with CASA, The Innocence Project, or other non-profit organizations, there’s something for everyone. Do your part and bring “zing” back to your career. Get involved, and see where it leads you—both professionally and personally.

Patti

Texas Advanced Paralegal Seminar

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A block of rooms has been reserved at the Omni San Antonio Hotel. Hotel reservation deadline is **Friday, August 29, 2008**. All guest rooms at a rate of \$99 single/double are under **Texas Advanced Paralegal Seminar**. To reserve a guest room please call Central Reservations at 1-800-843-6664. **Room rate is approved for three days before and after.**

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Early registration deadline is **August 15, 2008**. Register via website online beginning June 1, 2008 or use the **TAPS brochure** in the June 2008 Texas Paralegal Journal and earn a discount on the attendance fee.

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For other information regarding TAPS visit:

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(Seminar details online June 2008)



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Focus on . . .

Paralegal Division, State Bar of Texas

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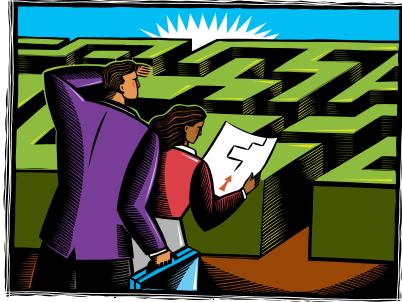
Having a certificate and being certified are two entirely different things.

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EDITOR'S Note

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

By the time I sat for the specialty exam for paralegals, one of my contact lenses had folded itself into a taco shape, and my homemade flash cards (color coded, even!) on causes of action, the new (at the time) venue rules and I can't even remember what else were falling out of every purse, drawer and vehicle I got anywhere near. The one thing that kept me motivated was the fact that I decided to learn.

I decided to learn about the rules, the canons, the procedures, and the personalities of the legal community. I had been a good student, and I had always been an avid reader. It never occurred to me that I could not learn something if I just threw myself into it. I took that dedication and decided to apply it to improving my career.

When I finally started to understand paralegalism and its role in the provision of legal services, it was as if a door had opened in my life. I was proud that I could actually pass the specialty exam, and to think that I had done it all just by hard work and determination!

I believe that if you challenge your mind, it will keep it broader, sharper and livelier as you age. Plus, the benefits are more than just the satisfaction that comes from having risen to a challenge.

The goal to learn everything about paralegalism is not a battle I will ever win, but every investment I make seems to grow with a steady rate of interest. And membership in the PD continues to offer new opportunities for learning!

PARALEGAL DIVISION

STATE BAR OF TEXAS

2008 ANNUAL MEETING

June 26–27, 2008

Brown Convention Center

Houston, Texas

(See details on page 18)

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

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Paralegal Division, State Bar of Texas

By Norma Hackler, CMP

The Paralegal Division (PD) was the first paralegal organization to become affiliated with a State Bar in the country. The Paralegal Division (formerly known as the Legal Assistants Division) was created by the State Bar of Texas (SBOT) on October 23, 1981. On October 23, 2008, the Paralegal Division will celebrate its 27th anniversary as well as Texas Paralegal Day. During the creation of the PD, the State Bar of Texas Board of Directors adopted a stated purpose of the Division, “to enhance legal assistants’ participation in the administration of justice, professional responsibility and public service in cooperation with the State Bar.” An additional reason for forming the Division was to provide a state-wide organization for legal assistants which would serve as a central vehicle for effective communication and resolution of matters of mutual concern to legal assistants throughout the State.

Membership in the Paralegal Division does not certify, register, or regulate the paralegal profession in any way. There is no regulation in the State of Texas for paralegals. All certifications must be obtained by successfully passing an examination administered by one of the following organizations: Texas Board of Legal Specialization, National Association of Legal Assistants, or National Federation of Paralegal Associations. However, there is a CLE requirement to maintain Active and/or Associate membership in the Paralegal Division. Currently, 6 hours of CLE

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no regulation in the
State of Texas for
paralegals.**

is mandated to renew Active and Associate membership in the Paralegal Division. The 6 hours of CLE must be obtained within the PD’s fiscal year (June 1–May 31).

In April 2005, the SBOT approved a name change from Legal Assistant Division to the *Paralegal Division*. Following a national trend of using the title legal assistant to refer to legal staff and not specifically to those persons performing substantive job duties, the Bar felt that the term “paralegal” was more specific to the nature of the substantive legal work paralegals performed. The SBOT Board of Directors also approved changing the words “legal assistant” to “paralegal” in its definition of a legal assistant. The definition now reads as follows:

A paralegal is a person, qualified through various combinations of education, training, or work experience, who is employed or engaged by a lawyer, law office, governmen-

tal agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of a licensed attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal principles and procedures that, absent such person, an attorney would be required to perform the task.

(Adopted June 13, 1987; revised by Division members December 1, 2005). (Revision of Definition of a Legal Assistant was adopted by the State Bar of Texas Board of Directors on April 8, 2005 to replace “legal assistant” with “paralegal.”)

A year following the PD name change, the SBOT Board of Directors adopted the “Texas Paralegal Standards.” An article authored by Judge Xavier Rodriguez, US District Judge for the Western District, entitled “State Bar Adopts New Standards” appears elsewhere in this issue. These standards were created and adopted because members of the Paralegal Division and supporters of paralegals worked hard to accomplish their goals; it was another great moment for the paralegal profession. A joint committee was formed that included members of the Paralegal Division and members of the Standing Committee on Paralegals (a SBOT committee) to write the standards that were ultimately submitted to the SBOT Board of Directors for a



vote. Judge Rodriguez appeared before the SBOT Board of Directors and was successful in its adoption. A copy of the Standards can be found on the Division's website under "Texas Paralegal Standards."

Today, the Paralegal Division represents paralegal members from across the State of Texas. There are also members outside of Texas who have maintained their membership even though they have moved from Texas paralegal jobs. For various reasons, they choose to continue their relationship with the Paralegal Division. There are approximately 1900 Paralegal Division members.

Membership in the Paralegal Division means different things to different people. Some have joined because they wanted to join their peers to raise the standards of the paralegal profession; others join to network with colleagues from across the state; and others join to learn more about the career path they have chosen. The Division can be many things to many people, but every member greatly benefits from each volunteer's hard work in developing the Paralegal Division as a leader in fostering the paralegal profession.

There are numerous other benefits as well. One of the most "user friendly" benefits of the Paralegal Division is its members-only E-Group. This is a listserv for paralegals to use to gain knowledge of the profession. If there is a question posed to this group, an answer is given in a flash. I have been told by one PD member that *her [attorney] boss comes to her with a question and requests that she send it out to the PD E-Group because he knows he will receive a quick response*; now that really says something. Other benefits for joining the Division can be found on the website at www.txpd.org, under Membership.

Over the past 17 years, I have come to know the members of the Paralegal Division. Trust me, these are the types of people you want to get to know and associate with. If you are a member and want to enjoy the true benefits of PD membership, working with other paralegals, just let us

know - there is a job for everyone. Not all of the members volunteer enormous amounts of time, some just do one job a year. Whatever you do, I am sure you will reap the benefits of joining in with other members to "grow your profession." *The Division is about You!*

To join the Paralegal Division, you can download a membership application from the Division's website at www.txpd.org. Just click on the Membership tab to view applications and criteria for membership. There are different membership categories:

ACTIVE MEMBER is an individual who performs specifically delegated substantive legal work at least 80% of the time and works under the direct supervision of an attorney; or is a contract (freelance) paralegal who performs specifically delegated substantive legal work under the direct supervision of an attorney.

ASSOCIATE MEMBER is an individual who performs specifically delegated substantive legal work for at least fifty percent of the time and works under the direct supervision of an attorney OR is employed as the coordinator or supervisor of a paralegal program within a firm, corporation or agency.

EMERITUS MEMBER is an individual who at one time was an ACTIVE member of the Paralegal Division but is no longer working as a paralegal. An emeritus member shall have all of the privileges and prerogatives of an active member, except that an emeritus member may not vote, hold office, or serve as the chair on any committee or subcommittee.

SUBSCRIBING MEMBER is any individual who is interested in supporting the purposes and goals of the Division. Subscribing members shall not be entitled to vote, hold office, or

serve as chair of a committee. It is not the intent of the Division for subscribing members to use their membership in the Division for the purpose of marketing or supplying products or services to the legal profession.

STUDENT MEMBER is an individual attending a paralegal education program that meets the criteria of the Paralegal Division. A student member shall have all the privileges and prerogatives of an active member, except that a student member may not vote, hold office, or serve as the chair of any committee.

SUSTAINING MEMBER is a law firm, corporation, paralegal training program, company, or individual who supports the purposes and the goals of the Paralegal Division of the State Bar of Texas. Sustaining members shall not be entitled to vote, hold office or serve in a voting capacity on a committee.

The Paralegal Division leadership recognizes "To be a vital, dynamic section of the State Bar, the Division, a professional association governed by its members, must continue to grow and change. Growth and change require some basic ingredients: (i) the wisdom and experience of its long-time members, many of whom have taken on leadership positions; and (ii) the creativity, energy, intelligence, and enthusiasm of new members who are willing to give their time, share their ideas, and take responsibility for the future of the Division. The membership is the mainstay of the Division."

Norma Hackler is a certified meeting professional and has been the coordinator of the Paralegal Division since June 1990. Norma's work is performed in Austin, TX.



State Bar Adopts New Paralegal Standards

By Judge Xavier Rodriguez



Although the State Bar Paralegal Division (formerly known as the Legal Assistants Division) was created in 1981, questions continue to be asked about what skills or education a person should possess prior to being hired as a paralegal and what tasks may properly be assigned to a paralegal. In 2005, the State Bar Board of Directors revised the definition for legal assistant to reflect the distinction between a clerical administrative assistant and the term paralegal, and the division changed its name to Paralegal Division:

A paralegal is a person, qualified through various combinations of education, training, or work experience, who is employed or engaged by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of a licensed attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal principles and procedures that, absent such person, an attorney would be required to perform the task.

On April 21, 2006, the State Bar of Texas Board of Directors approved amending this definition by including the following voluntary standards, which are intended to assist the public in obtaining quality legal services, assist attorneys in their utilization of paralegals, and assist judges in determining whether paralegal work is a reimbursable cost when granting

attorney fees.

Attorneys and judges are encouraged to use the following standards as a guideline.

Support for Education, Training, and Work Experience

Attorneys are encouraged to promote: (a) paralegal attendance at continuing legal education programs; (b) paralegal board certification through the Texas Board of Legal Specialization (TBLS); (c) certification through a national paralegal organization such as the National Association of Legal Assistants (NALA) or the National Federation of Paralegal Associations (NFPA); and (d) membership in the State Bar Paralegal Division and/or local paralegal organizations.

In hiring paralegals and determining whether they possess the requisite education, attorneys are encouraged to consider the following: (a) specialty certification conferred by TBLS; (b) CLA/CP certification conferred by NALA; (c) PACE certification conferred by NFPA; (d) bachelor's or higher degree in any field together with a minimum of one year of employment experience performing substantive legal work under the direct supervision of a duly licensed attorney and completion of 15 hours of continuing legal education within that year; (e) certificate of completion from an American Bar Association-approved program of education and training for paralegals; or (f) certificate of completion from a paralegal program administered by any college or university accredited or approved by the Texas Higher Education Coordinating Board or its equivalent in another state.

Although it is desirable that an employ-

er hire a paralegal who has received legal instruction from a formal education program, the State Bar recognizes that some paralegals are nevertheless qualified if they received their training through previous work experience. In the event an applicant does not meet the educational criteria, it is suggested that only those applicants who have obtained a minimum of four years' previous work experience in performing substantive legal work, as that term is defined below, be considered a paralegal.

Delegation of Substantive Legal Work

"Substantive legal work" includes, but is not limited to, the following: conducting client interviews and maintaining general contact with the client; locating and interviewing witnesses; conducting investigations and statistical and documentary research; drafting documents, correspondence, and pleadings; summarizing depositions, interrogatories, and testimony; and attending executions of wills, real estate closings, depositions, court or administrative hearings, and trials with an attorney.

"Substantive legal work" does not include clerical or administrative work. Accordingly, a court may refuse to provide recovery of paralegal time for such non-substantive work. *Gill Sav. Ass'n v. Int'l Supply Co., Inc.*, 759 S.W.2d 697, 705 (Tex. App. Dallas 1988, writ denied).

Consideration of Ethical Obligations*

Attorney. The employing attorney has the responsibility for ensuring that the conduct of the paralegal performing the services is compatible with the professional obligations of the attorney. It also

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Focus on...

Putting Perspective on Paralegal Standards

By Javan Johnson, ACP



Why did Texas need standards for paralegals? Why should paralegals and attorneys want to embrace the idea of having paralegal standards? What can it mean to your paralegal career? What can it mean to an attorney's law practice? What can it mean to the client's legal matter? All of these are important questions for each of us to ask not only ourselves, but to also ask our attorneys, our law office administrators, our judges, our co-workers, and many others ask—why?

We thought it appropriate to bring focus back on the Texas Paralegal Stan-

dards ("Standards") that were adopted by the State Bar of Texas and the Paralegal Division in 2006. These Standards evolved after many years of work on the part of various committees of both the Paralegal Division and the State Bar of Texas, which included members of the Paralegal Committee to the State Bar of Texas, in seeking a more formal definition of "paralegal" in the State of Texas. Up until that time, there was no formal definition of who could work as a paralegal, or who could call themselves a paralegal. Literally anyone could work as a "paralegal," yet not meet the higher standard of professional-

ism that this profession does indeed deserve.

In the United States, paralegals have taken many different paths to their careers. These paths comprise an array of varying levels of education, different certifications and on-the-job training. Paralegals work in many areas of law, in a wide variety of practices, and the work we are required to do often depends on what mixture of experience, skills, education and certification we possess.

There was no specific educational or experience requirement in the United States or in Texas for paralegals. Some

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paralegals have built their career specifically through on-the-job experience. Others have taken a one or two-year paralegal program or received a Bachelor's degree—many work with Bachelor's degree in non-legal programs. Yet others sit for one type of certification examination or another—whether through one of the national paralegal groups, or through the Texas Board of Legal Specialization. We have evolved from a wide range of backgrounds with no specific path for us to follow—at least until now!

Our Paralegal Division has always had a vision of increasing professionalism to assist in maintaining the integrity of the legal profession. The use of paralegals makes legal services available to the public in an efficient and convenient way that should command respect and confidence. We were fortunate to have two members of the judiciary serving on the committees that researched these issues, and saw the Paralegal Standards come to fruition—Judge Xavier Rodriguez of the United States District Court, Western District of Texas, and Judge Lora Livingston of the 261st District Court, Travis County, Texas. Judge Rodriguez was gracious enough to write an article on the Standards which is reprinted within this edition.

In recent conversations with Judge Livingston concerning the Standards and why they are so important to the legal profession in Texas, Judge Livingston stressed professionalism—pure and simple. She has shared with numerous attorneys the

higher level of professionalism that is necessary in order to properly represent their clients and to seek appropriate recovery of paralegal time as part of an attorney's fees award. She has found that many attorneys are not familiar with the *Gill Savings* case referenced in the Standards, and which is the key case on what type of "substantive legal work" qualifies for an attorney's fee award. *Gill Savings* specifically sets out that clerical and administrative work performed by any person is not considered "substantive legal work" and therefore courts may reduce the attorney's fees award for any such work that does not meet that higher standard.

Judge Livingston routinely is reviewing requests for attorney's fees and having to educate attorneys and staff members as to what qualifies for an attorney's fees award. She deducts from the offered attorney's fees bills any clerical or administrative work that is included, thereby reducing the amount of award that the attorney receives. In asking her what she does to educate these attorneys, she said she literally sends them to the law library to read the *Gill Savings* case so that they are further educated as to what fees are allowed. In addition, she has handed out copies of the Standards to attorneys, and requested them to familiarize themselves with the meaning of the Standards.

Fellow paralegals, this is an important issue. It is vital for each of you to become familiar with the Standards, if you have not already done so. And even more vital is the

fact that your law firms, attorneys, administrators need to know about these Standards and begin using these Standards as the benchmark for hiring paralegals, utilizing paralegals, and billing paralegal time. Some of us may think—I don't fit into those categories in those Standards, so I reject the whole idea. In that case we should ask ourselves that "why?" question—why would we not want to be the most professional we can be in our careers?

We have raised the bar—forgive the pun, but it is true. The "legal bar" as a whole will benefit from these Standards giving a more formal definition to our profession. We have once again advanced the paralegal profession with our continued vision toward the future for Texas paralegals. Educate yourself and those around you. This Division is one that continues to enhance the paralegal profession, so let those advances also advance your own career.

Javan Johnson is a contract paralegal in Longview. Javan is a Board Certified paralegal in Civil Trial Law by the Texas Board of Legal Specialization and an Advanced Certified Paralegal in civil litigation by the National Association of Legal Assistants. She is a past President of the Division and has served as President-elect and District 14 Director of the Paralegal Division. Javan is a Charter Member of the Paralegal Division and is currently serving various volunteer positions for the Division as she has for the past 20 plus years.

(Continued from page 9)
remains the obligation of the employing or supervising attorney to fully inform a client as to whether a paralegal will work on the legal matter, what the paralegal's fee will be, and whether the client will be billed for any non-substantive work performed by the paralegal.

Paralegal. A paralegal is prohibited from engaging in the practice of law, providing legal advice, signing pleadings, negotiating settlement agreements, solicit-

ing legal business on behalf of an attorney, setting a legal fee, accepting a case, or advertising or contracting with members of the general public for the performance of legal functions.

*A more expansive list is included in the "General Guidelines for the Utilization of the Services of Legal Assistants by Attorneys," approved by the State Bar Board of Directors, May 1993.

These standards can also be found at www.txpd.org under the button entitled "Texas Paralegal Standards" on the left side of the home page.

Xavier Rodriguez has served as U.S. district judge for the Western District of Texas since 2003. He is a former justice of the Supreme Court of Texas and a former partner in the San Antonio office of Fulbright & Jaworski L.L.P. Rodriguez is chair of the State Bar of Texas Paralegal Committee.

[Note: Reprinted with permission from Judge Xavier Rodriguez and the Texas Bar Journal. This article appeared in the October 2006 issue of the *Texas Bar Journal*.]



Certificate or Certified?

By Mary K. LaRue, CP

Certificate" and "Certified" sound similar, thereby causing a lot of confusion for some in the paralegal profession and especially some new to the profession. While they may seem like the same thing, they are not the same thing at all. Having a certificate and being certified are two entirely different things. This article tries to clear up some of the confusion.

"Certified"

If a paralegal states that he or she "is certified," then that means, if they are using the term correctly, that they have made a passing grade on a comprehensive test administered by an organization such as the National Association of Legal Assistants ("N.A.L.A.") or the National Federation of Paralegal Associations ("N.F.P.A.") or by their state. And in addition to passing the test, it means that they have kept their certification current by attending the correct minimum number of mandatory Continuing Legal Education classes each year. Note that the paralegal must have met certain minimum standards of education and/or work experience before being allowed to take the exam.

Passing the exam means the paralegal has objectively demonstrated at least minimum competency and proficiency in the areas of knowledge and skill required of a paralegal. In other words, it is important to understand that being certified is not something that can be obtained simply by paying a fee or showing up for some presentations. If a paralegal is certified, he or

If these academic institutions could find some other term to use, it would be helpful, because this contributes to the confusion in the profession.

she can use the designation of Certified Paralegal or Registered Paralegal after their name, depending on which test they passed. In Texas, paralegals that pass the Texas Board of Legal Specialization test can refer to themselves as Board Certified. Texas is one of the few states that allow paralegals to sit for Board exams.

If someone states that they are certified, but have not passed an exam as described above, they are not certified and should not be using that term to refer to themselves.

"Certificate"

Except as explained below, a certificate is something anyone can obtain by paying a fee and/or showing up for some presentations. These presentations do not require anyone to meet any minimum standards of knowledge or skill.

To make things even more confusing, many academic institutions use the term "certificate" to apply to students who

graduate from their paralegal programs when those students already have a degree from one institution, such as a university, then switch to another institution, such as a community college, to take their paralegal classes. For example, a person could finish a bachelor's degree, and then go to a community college to take paralegal classes that are not offered at the institution where they got their bachelor's degree. Thus, that person would have a bachelor's degree plus a paralegal certificate once they successfully pass all their paralegal classes. If these academic institutions could find some other term to use, it would be helpful, because this contributes to the confusion in the profession. Also, many proprietary schools refer to what they give persons who complete classes at their schools as a "certificate."

It is important to note that the persons in the examples above who earned a bachelor's degree plus a paralegal certificate or who got a certificate from a proprietary school still cannot properly refer to themselves as "certified" unless they have taken and passed an exam (or exams) as set forth at the beginning of this article.

For more detail on this subject, and for information about applying to take one or more of the certification exams, go to nala.org, or paralegals.org, or to the Division website at www.txpd.org.

Mary K. LaRue is certified by NALA and is a paralegal with the El Paso firm of John M. Dickey & Associates.



Board Certification by Texas Board of Legal Specialization

By Heidi Beginski,

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

Board Certification by the Texas Board of Legal Specialization ("TBLS") is a voluntary designation program for attorneys and paralegals. Initial certification is valid for a period of five years for paralegals as well as for attorneys in specialty areas of law.

The specialty areas of law that are currently tested for paralegals are as follows: Civil Trial Law, Personal Injury Law, Criminal Law, Family Law, Estate Planning and Probate Law, and Real Estate Law.

To remain certified, an attorney and paralegal must apply for recertification every five years and meet substantial involvement, peer review and continuing legal education requirements for the specialty area.

The Benefits of Becoming Board Certified

Professionalism – Certification promotes the availability, accessibility and quality of legal services. It also increases proficiency and encourages attorneys and paralegals to achieve high standards of professional excellence.

Professional Recognition – Recognition from the public and the legal community for having attained a certain level of experience and skill as a specialist. Although not always determinative, the Board Certification is one factor clients consider when selecting an attorney and other attorneys weigh when making referrals.

National Recognition—TBLS currently has the largest number of certified attorneys in the nation. TBLS was the first state-associated program to certify paralegals in specialty areas.

To Become Board Certified in a specialty area, a paralegal must:

Have at least 5 years experience as a paralegal (3 years in Texas);

Currently work under the supervision of a licensed attorney doing business in Texas;

Have at least 50 percent of paralegal duties concentrated in specialty areas;

Attend continuing education seminars regularly to keep legal training up to date;

In addition to the above, successfully complete one of the following:

NALA Certification, or

Baccalaureate or higher degree,

or

ABA approved paralegal pro-

gram, or

Paralegal program consisting of a minimum of 60 semester credit hours of which 18 hours are substantive legal courses, or

Paralegal program consisting of a minimum of 18 semester credit hours of which 18 hours are substantive legal courses in addition to a minimum of 45 semester credit hours of actual paralegal experience

under the supervision of a licensed attorney;

Have been evaluated by lawyers, judges and other professionals associated with the specialty area;
Pass a 4-hour written exam.

What Happens When You File an Application and How Long is the Application Process?

You will be sent an acknowledgement that your application has been received. It will include a file number that you should refer to when calling TBLS' office. The TBLS staff does an initial check of your application prior to review by the Advisory Commission and TBLS. A "Staff Deficiency Notice" will be sent if additional information is needed.

Your application will next be reviewed by the Advisory Commission in the appropriate specialty area. They may also have questions or need additional information.

The TBLS must vote on each certification application individually and they meet in mid-August to do so. You will be notified by mail after a decision is made on your application. If your application is approved you will be sent materials to register for the examination. If your application is denied you may appeal the decision (see TBLS Rules and Regulations).

The entire application and examination process takes approximately eight to nine



Texas Board of Legal Specialization LA Active or Pending Applications—By Area, By Year

App Year	CT	CR	PI	FM	RE	EP	Total
1994	19	0	26	15	0	0	60
1995	9	0	15	9	0	0	33
1996	7	0	6	12	0	0	25
1997	7	2	3	6	0	0	18
1998	3	3	8	9	5	6	34
1999	3	0	6	7	1	2	19
2000	6	1	2	4	1	4	18
2001	8	0	4	5	2	0	19
2002	2	0	5	15	3	0	25
2003	2	0	4	5	1	1	13
2004	7	1	3	2	0	1	14
2005	3	2	3	3	2	0	13
2006	4	1	4	5	0	0	14
2007	2	1	3	4	0	0	10
Total	82	11	14	101	92	15	315

months to complete.

What is On the Exam?

Exam Specification for each specialty exam are available on TBLS's website. The specifications and exams are revised annually. All exams are confidential and unavailable for public review.

Preparatory Courses

TBLS does not sponsor or recommend any specific preparatory course for the exam. However, certified attorneys and paralegals have reported that the State Bar Professional Development Program's Advanced courses are very comprehensive with the most up-to-date law. Continuing Legal Education seminars that have been approved by the Texas Board of Legal Specialization are beneficial to persons who apply to take the TBLS examination.

To Maintain Certification

TBLS requires all certified paralegals to report annual substantial involvement percentages and pay annual fees. Paralegals are mailed a form for reporting the annual information and paying the fees. Paralegals must complete the annual process by April 15th of each year. The paralegal annual fee

TBLS Timeline

1987

A Task Force for Voluntary Certification was established. The Paralegal Division Board of Directors resolved to go forward with a Texas exam, although no definitive exam was discussed. Educational programs were created in a list format that offered paralegal training to paralegals. Mock grievance procedures were conducted by the Ethics Committee.

1988

Funds were allocated for future implementation of a certification program.

1990

A Paralegal Division ad hoc committee was formed to digest the data on voluntary certification.

1991

The voluntary certification digest was released, the consensus was that the Paralegal Division would support a certification exam. A Voluntary Certification Task Force was created to work with the division.

1992

The Joint Task Force on Specialty Certification made significant advances toward establishing a plan toward certification exams for paralegals. The Paralegal Division sponsored joint CLE seminars with local associations.

1994

The first specialty exams were given by TBLS on March 26, 1994 to 157 paralegals.



is \$25 per certificate.

TBLS reviews hundreds of CLE courses for specialization approval, and updates its database daily with course approval information. You can access TBLS CLE information online at "MyTBLS," at www.tbls.org.

Board Certified paralegals have a continuing duty to disclose the following matters at any time during the certification period: (i) any sanction(s) imposed against the Board Certified paralegal; (ii) a criminal indictment or information filed against the Board Certified paralegal for a felony or misdemeanor involving moral turpitude or other serious crime; or (iii) a conviction of (including probation or deferred adjudication), or fine, for a felony or misdemeanor involving moral turpitude or other serious crime as defined in the Attorney Standards – General Requirements, Section III, B, 1. All such matters must be reported to TBLS within 30 days after the initiation of such proceedings or imposition of sanction or judgment, as appropriate.

Certified Paralegals In Texas

Civil Trial Law	84
Criminal Law	10
Estate Planning and Probate Law	14
Family Law	101

Personal Injury Trial Law	97
Real Estate Law	15
Total Active Paralegal Certificates:	321

Procedure to Add Additional Testing Areas

The Texas Board of Legal Specialization has developed procedures to add specialty areas of law testing for paralegals. Please go to <http://www.tbls.org/Default.aspx?tabid=113> to view specific procedures to request additional testing areas be created for paralegals.

How To Contact TBLS

Gary NcNeil, <i>Executive Director, Certification Substantial Involvement Inquiries</i>
Odessa Bradshaw, <i>Associate Executive Director, Accreditation of Attorney Certifying Organization Discipline Disclosure Information</i>
Denise Trece Schumann, <i>Member Services Manager, Website and Exam Information</i>
Priscilla Leal, <i>Lead Certification Analyst, CLE Course Approval</i>
Brenda Martinez, <i>Certification Analyst, Administrative Law, Bankruptcy Law, Civil</i>
Trial Law, Consumer and Commercial

Law, Family Law, Labor and Employment Law, Workers' Compensation
Kathy Logue, *Certification Analyst, Civil Appellate Law, Estate Planning and Probate Law, Health Law, Immigration and Nationality Law, Oil, Gas and Mineral Law, Real Estate Law, Tax Law*
Molly Galvez, *Certification Analyst, Criminal Law, Juvenile Law and Personal Injury Trial Law, Paralegal Certification*

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Austin, TX 78711-2487
Centennial Towers
505 E. Huntland Drive, Suite 400
Austin, TX 78752
800-204-222 ext. 1454, 512-453-7266
FAX: 512-453-7220
www.tbls.org

Heidi Beginski is a paralegal with the law firm of Rincon Mounts, P.C. in El Paso. Heidi is a Board Certified Paralegal in Personal Injury Trial Law by the Texas Board of Legal Specialization. She served as past District 16 Director of the Paralegal Division and is currently serving as editor of the Texas Paralegal Journal.

CLE after TBLS Board Certification

By Michele Boerder, CP, *Board Certified Paralegal, Civil Trial Law, Texas Board of Legal Specialization,* and Molly Galvez, *Certification Analyst, Texas Board of Legal Specialization*

The Texas Board of Legal Specialization began paralegal specialty certification in 1994. It was the first such attorney specialization program in the United States to promulgate specialty certification for paralegals.

TBLS undertook paralegal certification after many years of work by the Paralegal Division and the Paralegal Committee of the State Bar of Texas to determine a certification program for Texas paralegals.

A certification applicant must have a

minimum of 5 years of actual experience as a paralegal by December 31 in the year of application, and have actual Texas experience in the particular specialty area during each of the 3 years immediately preceding the application. The paralegal must



be working under the direct supervision of a licensed Texas attorney before qualifying to take the exam.

Substantive areas of law available for paralegal certification by the TBLS are: Criminal, Civil Trial, Estate Planning & Probate, Family, Personal Injury Trial and Real Estate Law. Visit the TBLS website, www.tbls.org to obtain an application and to view the requirements to sit for the exam and the requirements to maintain certification. (After a paralegal is Board certified, 75 hours of CLE *in the area of certification* is required over a five year period to maintain the certification.)

Because other paralegal entities (such as the Paralegal Division and local associations) as well as other certification programs (such as NALA Certified Paralegal, or NFPA Registered Paralegal) *also* require CLE, it is sometimes confusing as to what programs will be accepted for TBLS credit (towards the 75 hours over five years).

For TBLS purposes, CLE is calculated on a calendar year basis.

1. *Certification.* A certification applicant must complete 30 hours of CLE in the specialty area within the 3 years imme-

dately preceding application, through December 31 of the year of application.

2. *Recertification.* A recertification applicant must complete 75 hours of CLE in the specialty area by December 31 of each 5th year of certification.

Qualifying CLE.

An applicant or board certified paralegal must obtain CLE credit in the specialty area in which certification or recertification is sought by the following methods:

1. Attendance at a live CLE program, including live video conferences.
2. Viewing or listening to an online CLE program.
3. Participating in a CLE teleconference.
4. Attendance at a showing of a CLE video.

Some CLE may be creditable by several TBLS certification areas. For example, there is overlap between Civil Trial, Personal Injury, and Family Law. If there is a question as to whether a CLE should be accepted for a particular specialty area, the TBLS staff forwards the CLE informa-

tion to the appropriate commission for review and decision.

When keeping track of CLE attended, segregate or note the presentations that specifically relate to your TBLS specialty area, as those are the only CLE hours that will apply (and may be submitted) for continuing your TBLS certification. (Only submit your CLE to the TBLS if you are board certified OR have an application pending.)

Many CLE opportunities are available through the State Bar, and the Paralegal Division, State Bar of Texas (see www.txpd.org at CLE and Events). In addition, the Division website lists many other CLE programs offered at the local level as well as on-line web-based CLE.

Michele Boerder is a paralegal with the law firm of K & L Gates in Dallas. Michele is a Board Certified Paralegal in Civil Trial Law by the Texas Board of Legal Specialization and a certified paralegal by the National Association of Legal Assistants. She is a past President of the Paralegal Division and served as District 2 Director. Michele is a Charter Member of the Paralegal Division.

PARALEGAL DIVISION VOTE 2008

District Director Elections and Bylaws Amendments

The PD's SEVENTH ONLINE ELECTION will take place April 4, 2008 through April 19, 2008.

District Director Elections:

The election of district directors to the Board of Directors will be held in even-numbered districts (Districts 2, 4, 6, 8, 10, 12, 14, and 16).

Bylaws Amendments:

Active members can vote for or against the proposed Bylaws Amendment(s) of the Division. For an explanation of the proposed Bylaws amendments, please go to www.txpd.org and view the NEWS item entitled "Vote for Director Elections and Bylaw Amendments."

Active members of the PD in good standing as of February 1, 2008 are eligible to vote. All voting must be completed on or before 11:59 p.m., April 19, 2008.

Please take a few minutes to logon to the PD's website and cast your vote for your district's director (only even-numbered districts vote in 2008) and Bylaws amendments. The process is fast, easy, anonymous, and secure.

Between April 4th and April 19th, go to www.txpd.org

- In the Member-Only section, click on "Vote"

- Follow the instructions to login and vote (you will need your bar card number in order to vote).

If you do not have access to the Internet at home or the office, you can access the TX-PD website at your local library. No ballots will be mailed to members as *all voting will be online*. A postcard will be mailed to each Active voting member in April giving notification of the voting period. If you need any further information, contact the Elections Chair, Melanie Langford, at mlangford@akingump.com.

TAKE THE TIME, MAKE YOUR VOICE HEARD!



How to Become a Certified Paralegal through NALA

By Clara L. Buckland, CP



First, I commend you for your desire to accomplish this feat. I write this not because it is impossible, but because it is something we decide to undertake voluntarily. As you may know, being certified is not a requirement for working as a paralegal, but the paralegal profession as a whole, however, has been working diligently toward higher standards and self-regulation. Becoming certified represents that you have taken the extra step to assure you are qualified to assist your supervising attorney in offering quality legal services. Is that not, after all, what a good paralegal should be—an indispensable part of the legal team?

Certified Legal Assistant/Certified Paralegal

There are many ideas about what being "certified" means. You can be certified by the Texas Board of Legal Specialization ("TBLS"), in a specific area of law, or you can be certified by the National Association of Legal Assistants ("NALA"). Taking a six-week college course on paralegal studies earns you a certificate of completion. The certificate, however, does not make you "certified," it makes you "certificated." For the purpose of this article, the term "certified" means being a NALA Certified Legal Assistant/Certified Paralegal ("CLA/CP"). Further, because it is the preferred term, and to make it an easier read, I will use the term paralegal throughout the remainder of this article.

The National Association of Legal Assistants ("NALA")

NALA is a leading professional association for paralegals, created in 1975 to improve

the quality and effectiveness of the delivery of legal services. NALA provides continuing legal education and professional development programs for paralegals. At last count, NALA is 18,000 members strong. Membership consists of local affiliated associations, individual, and state members nationwide.

The CLA program was established in 1976. It has allowed the profession a self-regulatory program and a credential recognized nationwide. The CLA/CP program establishes and serves as a national professional standard for paralegals and further expands on the development of this career field.

National surveys show Certified Paralegals are better paid, and better utilized by attorneys who are looking for a credible, dependable way to measure a paralegal's ability. Further, the CLA/CP credential is recognized not only by the American Bar Association as a designation of a marked high level of professional achievement, but by more than 47 paralegal organizations and numerous bar associations nationwide.

Examination Eligibility Requirements

To be eligible to sit for the CLA/CP examination, a paralegal applicant must meet one of the following alternate requirements:

Graduation from a legal assistant program that is:

- Approved by the ABA; or
- An associate program; or
- A post-baccalaureate certificate program in legal assistant studies; or
- A bachelor's degree program in paralegal studies, or
- A paralegal program which consists of a

minimum of 60 semester hours, of which 22.5 quarter hours are substantive legal courses.

A bachelor's degree in any field plus one year's experience as a paralegal. Successful completion of at least 15 semester hours of substantive paralegal courses will be considered equivalent to one year's experience as a paralegal. A high school diploma or equivalent plus seven (7) years' experience as a paralegal under the supervision of an attorney, plus evidence of a minimum of twenty hours of CLE credit to have been completed within a two year period prior to the examination date.

The Examination

The CLA/CP examination is a two-day comprehensive examination based on federal law and procedure. The major subject areas required are:

- Communications,
- Ethics,
- Legal Research,
- (*) Human Relations and Interviewing Techniques,
- Judgment and Analytical Ability,
- (*) Legal Terminology, and,
- The Substantive section which consists of five mini examinations covering the American Legal System, and four areas of law selected by the examinee from the following:
 - Administrative Law,
 - Bankruptcy,
 - Business Organizations/Corporations,
 - Contracts,
 - Family Law,



Criminal Law and Procedure,
Litigation,
Probate and Estate Planning, and
Real Estate.

(*) Note: the questions covering Human Relations and Interviewing Techniques, and Legal Terminology are included in the Communications and Substantive Law Sections, respectively.

When and Where the Exam is Offered

The CLA/CP exam is offered three times a year (spring, summer and winter), specifically, March/April, depending on the holiday schedule, July, and December. The application form and fees must be received by the published filing deadline which is January 15 for the spring test, May 15 for summer, and October 1 for winter.

Many schools, universities and junior colleges serve as testing centers through an arrangement with NALA. In cities where a testing center is not already established and 10 or more paralegals apply to test during one of the scheduled test dates, NALA will establish a testing center.

In order to pass, a paralegal must successfully complete all five sections of the examination.

Fees

The fee for the CLA/CP examination is

\$250 for NALA members and \$275 for nonmembers. Retake fees are \$60 per section.

Maintaining Professional Certification

The CLA/CP credential is awarded for a five-year period. To maintain valid certification status, a paralegal must submit proof of participation in a minimum of 50 hours of CLE programs every five years, which must include five hours on the subject of legal ethics. A completed Recertification Audit Verification, plus a fee of \$70 is required at the time of recertification.

For More Information on NALA and the CLA/CP Examination

You can obtain detailed information on NALA, the exam, test subjects, study materials, and download forms at www.nala.org. Additionally, employers can confirm if a paralegal is a NALA CLA/CP at <http://www.nala.org/CertSearch/CertSearch1.htm>.

On a Personal Note

The Communications section of the exam was not difficult for me; however, through my communications with other paralegals who have taken the exam, I understand it is one of the toughest sections of the exam. I encourage you to go back to the

basic rules of writing. A study tool to consider is *The Elements of Style*, Strunk & White.

Personally, the toughest section of the exam was Judgment and Analytical Ability. If you know a newly licensed attorney, I strongly suggest that you ask if he/she is willing to sell or allow you to borrow the *Multistate Performance Test Workbook barbri Bar Review*. This volume of the barbri offers practice exercises on fact gathering, problem solving, legal analysis and reasoning. This was the tool that turned on the light in my head. Before doing these exercises, I just did not see what I was doing wrong.

In closing, again, I want to congratulate you on your goal and to wish you much success in this and all other endeavors you undertake.

"The secret of joy in work is contained in one word—excellence. To know how to do something well is to enjoy it." —Pearl Buck

Clara Buckland, CP, District 16 Director and Secretary of the Paralegal Division of the State Bar of Texas, is with the El Paso firm of Kemp Smith, LLP. She is a certified paralegal by the National Association of Legal Assistants.

PARALEGAL DIVISION, STATE BAR OF TEXAS

2008 ANNUAL MEETING, June 26 & 27, 2008, Brown Convention Center, Houston, Texas

Paralegal Division Luncheon and Annual Meeting*

Friday, June 27, 2007

11:15 am – 1:30 pm

Keynote Speaker: RUSTY HARDIN

Rusty Hardin & Associates, Houston
State of the Division and Swearing in of
new Officers and Directors

Registration will be a fixed price of \$245
for full registration (\$150 for a one day
registration) and includes entry to the
exhibit hall, two full days of CLE offered

by the Division and Sections of the State Bar of Texas, breakfasts, luncheons with featured speakers sponsored by the State Bar, and a personal flash drive containing all the CLE materials. On-line registration available at www.texasbar.com; for hotel and other information, please visit the Texas Bar website.

*Note: Attendance at the Paralegal Division luncheon and Annual Meeting will be an additional cost. More details to follow.

Continuing Legal Education

Friday, June 27, 2007

9:00 am – 2:30 pm

What Lawyers and Paralegals

Need to Know about Complying with the Texas Disciplinary Rules,

Judge Tracy Christopher, Houston

What to Look for in

Medical Record Summaries,

Brant J. Stogner, Houston

Pro Bono Opportunities,

Warren Cole, Houston

National Federation of Paralegal Associations and the Paralegal Advanced Competency Exam

By Stephanie Hawkes, RP



HOT "GIFS"

The National Federation of Paralegal Associations (NFPA) was the first national paralegal association, founded in 1974. Today, NFPA is comprised of more than 50 member associations and represents more than 11,000 paralegals across the United States. NFPA is a grass-roots association, dedicated to advancement of the paralegal profession. In 1994, as a way to advance the profession, NFPA voted to create the Paralegal Advanced Competency Exam (PACE) in order to validate the experience and job skills of paralegals who have been in the profession for a number of years.

The PACE exam covers five domains:

Administration of Client Legal Matters
Development of Client Legal Matters
Factual and Legal Research
Factual and Legal Writing and

Office Administration

The criteria to sit for the PACE exam includes both work experience and education. These requirements are: an associate's degree in paralegal studies from an accredited school and six years substantive paralegal experience; or a bachelor's degree and three years of substantive paralegal experience; or a bachelor's degree and completion of a paralegal program at an accredited school and two years substantive paralegal experience or four years substantive paralegal experience on or before December 31, 2000.

The exam is administrated by computer, over a four-hour period at selected Sylvan Technology Centers. The RP candidate can select the location and date of testing, subject to the limitations of the Sylvan Center. The application fee for the exam is

\$25 for NFPA members and \$75 for non-members. The exam fee is \$225 for NFPA members and \$250 for non-members.

Once a paralegal passes the PACE exam, they may use the designation "PACE—Registered Paralegal" or "RP." In order to maintain this credential, the RP is required to complete 12 hours of continuing legal education every two years, with at least one hour in legal ethics.

More information about the PACE exam and NFPA can be found on the NFPA website, www.paralegals.org.

Stephanie Hawkes, RP, is Manager of Consumer Privacy and Information Security for Nissan Motor Acceptance Corporation in Irving, Texas. She is a registered paralegal by the National Federation of Paralegal Associations.

STATE BAR OF TEXAS, PARALEGAL DIVISION

Sustaining Membership Roster (as of March 4, 2008)

Ajilon Legal www.ajilonlegal.com	Esquire Solutions www.esquirecom.com	Navarro College www.navarrocollege.edu	Special Counsel www.specialcounsel.com
Amarillo College www.actx.edu	Hollerbach & Associates, Inc. www.hollerbach.com	NewLine Legal Practice Support www.newlinelegal.com	Sunbelt Reporting www.sunbeltreporting.com
Angelina College www.angelia.edu	Innovative Legal Solutions www.innovativelegalsolutions.com	North Harris College www.nhmccd.edu	Team Legal www.teamlegal.net
Attorney Resource www.attorneyresource.com	Legal Concierge, Inc. www.mylegalconcierge.com	National Registered Agents, Inc. www.nrai.com	Texas Legal Copies, Inc. www.texaslegalcopies.com
CaseFileXpress, LP www.cfxpress.com	Litigation Solution, Inc. www.lsilegal.com	Open Door Solutions www.opendorsolutions.com	Texas Star Document Services www.texasstardocs.com
Center for Advanced Legal Studies www.paralegalpeople.com	Litigation Technology Consulting, Inc. www.ltci-austin.com	Paralegals Plus, Inc. www.paralegalsplus.com	Trial Logistics, Inc. www.triallogistics.com
Copy Solutions www.copy-solutions.net	Merrill Corporation www.merrillcorp.com	Priority Information Services www.priorityinfo.com	Wolfe Services www.wolfelegalservices.com
El Centro College Paralegal Studies Program www.dcccd.edu	The Marker Group www.marker-group.com	RLS Court Reporting www.teamrls.com	Written Deposition Service www.writtendeposition.com
		South Texas College www.southtexascollege.edu	

What's in a Paralegal Program?

By Rhonda J. Brashears, CP, Board Certified Paralegal, Personal Injury Trial Law,
Texas Board of Legal Specialization

Did you know that all paralegal programs are not created equal? Paralegal programs, like many things in today's society, are a buyer- or a student-beware market. A student should thoroughly research a program before applying or enrolling. Programs across the state (and while I did not research nationwide programs I imagine this holds true nationwide), provide vastly different results at the end of the program. In addition, the type of student that a program can accept varies from program to program. This article discusses the various types of programs offered to or that are available to residents of the State of Texas, but is not meant to recommend a specific program over another.

Types of Programs

Associates Degree Program

These programs are offered by two-year community colleges, universities and business schools. The two-year program is sometimes offered in conjunction with an associate's degree. Upon successful completion of the two-year program that may offer up to 60 to 70 semester hours, a student earns an associates degree. The course usually offers both substantive law courses and general education courses.

Baccalaureate Degree Program

These programs are completed in approximately four years and are offered by four-year colleges/universities. They offer a major or minor in paralegal studies or a concentration within another major. To be accepted into these types of programs a student would be required to meet the criteria to register in that college or university.

Master's Degree Program

These programs offer an advanced degree

in paralegal studies. In the State of Texas, there are only a few programs that offer this degree. Entry into this type of program would require a four-year college degree and, most often, a minimum GPA. There may be other requirements set by the college or university for acceptance.

Certificate Programs

There are programs around the state that are not associated with a college or university that offer a certificate of completion in paralegal studies. Sometimes, these programs will require the student to have already obtained an associates or bachelor's degree. These programs vary in the number of credit or clock hours that they offer. After successful completion of the program the student receives a certificate of completion.

How Do You Choose a Program?

With so many choices, how does a potential student possibly decide which course will work best and provide the necessary education to obtain a paralegal job or to advance in the job already held?

One of indicators of a good program is whether it is ABA (American Bar Association) approved. The ABA is the most recognized paralegal program accrediting entity for paralegal programs. The ABA has been approving paralegal education programs since 1975. In order for a program to be approved by the ABA, a paralegal program must be offered by an institution that is accredited by an accrediting agency on an approved list and must go through a self-evaluation process and various on-site evaluations. It must meet standards relating to administration, resources, curriculum and academic policies, faculty and program direction, admission standards and practices, student services

including placement and counseling, library, and facilities. An overview of the approval process for programs as well as a list of the ABA approved programs across the United States is available at www.abanet.org/legalservices/paralegals. A program that has been approved by the ABA will provide you with a well-rounded paralegal education.

It is not necessary for a program to be ABA approved to be a quality program. Look for a program that provides students with good basic educational courses, skill-type courses such as keyboarding and document formatting, and of course, a good line-up of substantive legal courses (generally between 15 and 24 semester hours).

It is also wise to research paralegal programs through the American Association for Paralegal Educators website at www.aafpe.org. This website offers advice on how to select a paralegal program. If you are considering attending a paralegal program, you should review AAfPE's policy statement regarding short-term programs as well as the "Statement of Educational Minimums." In addition, AAfPE has links within its website to: Finding a Quality Program; Choosing a Program; Educational Standards; Evaluating Programs; and a database of paralegal programs by location/state.

It takes a very thorough investigation of a program and the results that that program has offered its legal community to determine whether a program will provide an adequate education. A little bit of homework ahead of time can make all the difference.



Rhonda is a Board Certified Paralegal in Personal Injury Trial Law by the Texas Board of Legal Specialization and a certified paralegal by the National Association of Legal Assistants. She is currently serving a President Elect of the Paralegal Division.

Texas Supreme Court Judicial Committee on Information Technology

By Julie Wade, ACED

The third part of our series on technology in the Texas judiciary focuses on the Texas Supreme Court Judicial Committee on Information Technology (JCIT), who they are, what they do, and the impact of their role in automating the Texas court system.

To bring you this article, I talked with Peter Vogel, a partner with the law firm of Gardere, Wynne & Sewell LLP, Dallas, who has been involved with the computer industry and electronic information since 1967, and who is chair of the Committee and has been involved with JCIT since its inception. Mr. Vogel also teaches courses on the *Law of eCommerce* as an Adjunct Professor at SMU Dedman Law School, and is on the founding Board of Advisors of the *SMU Computer Law Review and Technology Journal*. In addition, Mr. Vogel serves as Special Master to assist our courts with electronic evidence, and he serves both as an Arbitrator and as a court ordered Mediator in Internet, intellectual property, and computer technology litigations. In June 2004, Mr. Vogel received a Lifetime Achievement Award for Promoting Technology in the Law from the Computer & Technology Section of the State Bar of Texas.

Background

The formation of JCIT began as a task force in 1995, when the Texas legislature provided the Supreme Court with the authority and funding to conduct four studies, one of which sought to look into the state's present and future information technology needs for the judiciary. The Supreme Court asked Mr. Vogel and the other task force members to consider



these needs, devise a plan and report back to an interim committee of the legislature with their recommendations. In 1996, the task force members recommended that "JCIT be created with a small group of 15 so that they would be more nimble and better able to give advice to the Supreme Court," said Mr. Vogel. So, in 1997, the JCIT was created by the 75th Legislature to "establish standards and guidelines for the systematic implementation and integration of information technology into the trial and appellate courts in Texas." See JCIT Resolution, SHARED JUSTICE SYSTEM NETWORK, adopted June 28, 2002. "The JCIT supports and will work toward the development of a unified state telecommunications network to satisfy the judiciary's needs for statewide access, integrated justice, data sharing, electronic government initiatives, standards, open systems architecture, interoperability, and state-of-the art telecommunications services." *Id.* The JCIT now operates under Section 77 of the Government Code and is funded by

the state and operated by the Department of Information Resources (DIR). The standards written by the JCIT include the electronic filing of documents with courts. See 6 77.031, TEXAS GOVERNMENT CODE.

Pursuant to Section 77.011, Government Code, the following persons were appointed members of the Judicial Committee on Information Technology by the Chief Justice of The Supreme Court of Texas, being "representative, but not limited to, appellate court judges, appellate court clerks, district court judges, county court judges, statutory probate judges, justices of the peace, municipal court judges, district attorneys, court reporters, court administrators, district or county clerks, members of the legislature, attorneys, and the general public."

The terms of the following members end August 31, 2009:

Honorable Brian Quinn, Chief Justice,
7th Court of Appeals, Amarillo
Honorable Mike Cantrell, County

Commissioner, Dallas County,
Dallas
Honorable Scott Hochberg, State Representative, District 137, Houston
Honorable Jeff Wentworth, State Senator, District 25, San Antonio
Honorable Lamar McCorkle, Judge, 133rd Judicial District, Houston
Honorable Ronnie McDonald, County Judge, Bastrop County, Bastrop
Honorable Jay Johannes, Assistant County Attorney, Colorado County, Columbus
The terms of the following members end August 31, 2011:
Honorable Gary Harger, County Court at Law, Nolan County, Sweetwater
Honorable Linda Penn, Justice of the Peace, Bexar County, San Antonio
Honorable Berta A. Mejia, Presiding Judge, City of Houston Municipal Courts, Houston
Honorable Edward E. Wells, Jr., Clerk, Fourteenth Court of Appeals, Houston
Honorable Amalia Rodriguez-Mendoza, District Clerk, Travis County, Austin
Bob Wessels, Criminal Courts Administrator, Harris County, Houston
Peter Vogel, Partner, Gardere Sewell Wynne LLP, Dallas

Mr. Vogel serves as Chair and Mr. Wessels as Vice-Chair of the Committee. The following individuals serve as non-voting liaison members, at the pleasure of the Chief Justice:

Honorable Larry Myers, Judge, Court of Criminal Appeals
Honorable David Evans, District Judge, Tarrant County, Fort Worth
Honorable Frank Summers, County Judge, Milam County, Cameron
Honorable Blake Hawthorne, Clerk, Supreme Court of Texas, Austin
Honorable Louise Pearson, Clerk, Court of Criminal Appeals
Honorable Linda Ueker, District Clerk, Kerr County, Kerrville
Honorable John Warren, County Clerk, Dallas County, Dallas
Honorable Dana DeBeauvoir, County Clerk, Travis County, Austin

R. Michael Eastland, Director, North Central Texas Council of Governments, Arlington
Gary Hutton, Civil District Court Administrator, Bexar County, San Antonio
Jay Johnson, Education Program Manager, Texas Association of Counties, Austin
Penny Redington, Executive Director, Texas Association of Regional Councils, Austin
Carl Reynolds, Administrative Director, Office of Court Administration, Austin
Shelia Bailey Taylor, Chief Admin. Law Judge, State Office of Admin. Hearings, Austin
Mark Unger, The Unger Law Firm, San Antonio
Source: Orders in Miscellaneous Docket, <http://www.courts.state.tx.us/jcit/members.asp>

JCIT Role

According to Mr. Vogel, the Committee's focus has not changed much since 1997 when JCIT was created, in that "our general purpose is to try and help automate the court system in Texas and put internet on the desktops of all 3,271 judges and justices in 2,691 courts across the state."

There are 254 counties in Texas, and more than 1,100 cities, each of which locally funds its courts' computer systems. The JCIT has to depend on local commissioner's courts and city councils to implement technology for our courts, so they work closely with these bodies to help add more technology. "When it comes time to make important decisions, we get them involved with our Committee and with the Office of Court Administration (OCA) so that everything gets done in an orderly fashion," Mr. Vogel said.

To accomplish this, JCIT has been working closely with the Texas Association of Counties to put high speed internet in more than 60 counties around the state. Additionally, "JCIT helped set up statewide contracts with Lexis and Westlaw so that all judges, prosecutors, public defenders and clerks have an unlimited amount of internet access for a flat amount per

month," Mr. Vogel said. Before that, each individual judge had to buy his or her own contract.

JCIT also coordinates all 16 of the courts of appeals for their technology. In the past five years, they have implemented a new case management system with new hardware, and "as they get new hardware, we take the old hardware and give it away to judges around the state," says Mr. Vogel. "We've provided almost 500 computers to a variety of different judges and courts all over the state that are hand-me-downs, but they are better than what people had before," Mr. Vogel said.

Electronic Filing

Since the initial \$9.8 million appropriation by Texas legislators, the JCIT has successfully developed and implemented a statewide computer system capable of processing the over 10 million new cases and appeals that are filed each year. This process began in 2001, when the JCIT endorsed TexasOnline (www.texasonline.com) as the electronic filing manager provider to act as an advisor and assist with establishing the policies, guidelines, rules and standards for electronic filing. KPMG (now BearingPoint) was hired to fund and deliver, among other things, the case management system software, including document format interfaces and transmission envelope data using approved standards, install connectivity to courts and clerks as required for the system, and provide an open architecture that allowed filers to use any electronic filing service provider that meets with the JCIT standards and coordinate the interface with each electronic filing service provider.

In May 2003, Fort Bend was the first county to go online with the Texas eFiling system, and with the click of a mouse, Houston attorney Riecke Baumann became the first eFiler in the state, assisted by Fort Bend County Clerk, Diane Wilson.

"Now we have 31 of the state's 254 counties online with eFiling for their trial courts, which represents about 260 different courts and two-thirds of the population of Texas are covered with that," said Mr. Vogel. JCIT's work is continuing. "As of January 2008, we are also going to

be responsible for implementing an eFiling for the 821 JP courts around the state," said Mr. Vogel. Like the voluntary eFiling in the district courts, it is unknown how many JP courts will sign up immediately, "but it is available for people to file JP pleadings there."

Electronic Case Filing Service Providers

The Texas Legislature requires all state agencies to use TexasOnline for eGovernment activities. Mr. Vogel reported to the State Bar of Texas that in 2005, eGovernment transactions on TexasOnline topped the \$2 billion mark. TexasOnline delivers eFiled documents to all county and district clerks as the Electronic Filing Manager (EFM). As the EFM, TexasOnline gets electronic documents from various Electronic Filing Service Providers (EFSP), through which lawyers deliver their documents electronically for filing with the courts. Every lawyer or law firm needs to sign up with one of the approved EFSPs, which include: American LegalNet (U.S. Court Forms), CaseFileXpress, Court File America, eLaw Services, One Legal, MyFileRunner, and ProDoc. The total cost to eFile ranges between \$6 and \$16. Each county or district clerk receives \$2 of the fee, TexasOnline receives \$4, and the EFSPs are allowed to charge up to \$10. TexasOnline also allows electronic service of parties to a lawsuit, which will greatly speed up the time for service on corporate defendants.

The eFiling convenience is attractive for paralegals. However, one perceived drawback is that once we pay the initial filing fees for a petition and the eFiling fees for filing documents, we also have to "pay for view/print" when we want to access a document online to the various counties. To get to the ultimate goal for eFiling—for all trial court pleadings and trial records filed electronically in the municipal, JP, county, district and appellate courts—all the fees and access needs to be constructed on a fair and consistent state-wide basis. The day is coming when we will be able to download a deposition of an expert online, or pull up the transcript from someone else's trial, and review the petition and other court filings.

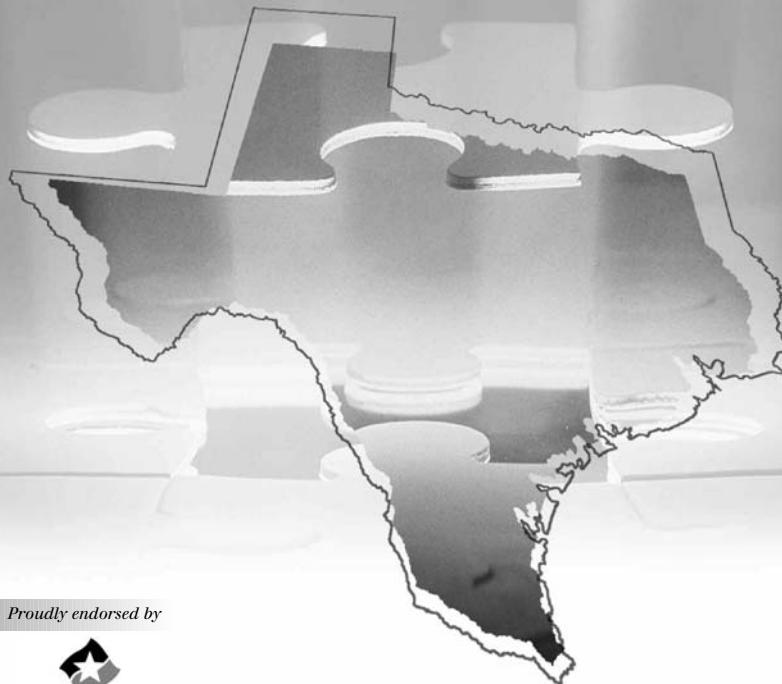
Mr. Vogel said he appreciates how much time and energy paralegals devote to assisting in the filing of cases, and he thinks that eFiling has been something that has been helpful to the paralegal community in general. Alleviating the time one spends at the copier is one benefit of eFiling and he appreciates everyone's work in making eFiling a success. Mr. Vogel acknowledged that he is aware that the eFiling service providers routinely recognize the top filers of the month, most of

whom he said, "are paralegals, the ones that are actually doing the work."

You can learn more about how Texas-Online eFiling for courts has improved both the efficiency in the courts and the daily lives of paralegals throughout the state at www.texas.gov.

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

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Technicalities

By Pamela L. Crosby

If there are any of you who feel as though your growing experiences with today's technologies are 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.

Despite a (sometimes) bad reputation, word processing programs are really a wonderful innovation! I became an instant convert the moment I first selected a portion of text from another document, copied it, and then pasted it into my current document. The cut, copy, and paste feature was especially exciting to me because at that time I was working with an attorney who specialized in estate planning. I immediately realized that "word processing" meant no more re-typing an entire page of a will because of one error and we could revise entire sections of a client's document within minutes using our handy cut, copy, and paste techniques. As time progressed, the only "fly in my ointment" was the font or paragraph formatting that was pasted into my document along with the text I wanted... and frequently it was difficult, if not impossible, to be rid of that formatting! On many occasions I became so frustrated in my efforts to rid my document of those unwanted codes and formatting that many times I gave up, deleted the text, and typed it in, so I ended up losing a lot of the advantages and time savings I was hoping to enjoy.

Then came *Paste Special*.

Paste Special is a context-sensitive tool that allows the user to paste text and graphics into a document in a format other than its original format. Even more

exciting to me was the discovery that Paste Special would allow me to paste text from another document, spreadsheet, presentation slide, PDF, or even a web page as *unformatted* text, allowing the inserted text to assume whatever formatting surrounded the insertion point. Here's how it works:

Paste One on Me

Select or "block" a section of text from an article on the Internet or from a document that is formatted with a different font than the one you are currently using, then press [Ctrl+C] to copy the text to the Clipboard. Now follow the instructions below for the word processing application you use.

The following applies to Microsoft® Office Word® 2003, Corel WordPerfect® 9 (WordPerfect® Office 2000), OpenOffice.org 2.2.1, NeoOffice 2.2.2, and StarOffice2 8 Writer. Switch to your Word, WordPerfect, or Writer application, then click on or scroll to the point in your document where you want to insert your copied text. Using your mouse or keyboard, activate the Edit (dropdown) menu and select Paste Special. A box with a list of selections will appear in the middle of your screen. Choose unformatted text and click on the OK button. The text you copied will be inserted using the same format as the surrounding text.

The following applies to Microsoft® Office Word® 2007.

Switch to your Word application; from the Menu Bar, click on Home. On the far left side of the Home "Ribbon" (the Ribbon is part of Microsoft's new Office 2007 Fluent User Interface) is a large Paste command button that is separated into two halves. Click the lower half of the button. (This is the half that has the word "Paste" with an

indicator arrow below the word Paste. The arrow indicates the presence of a drop-down menu). Select Paste Special from the Menu and the Paste Special dialog box will open with a list of options. Choose Unformatted Text and click the OK button. The text you copied will be inserted using the same format as the surrounding text.

You can also use this method to remove all formatting from an entire document at once. Select all of the text within the document [Ctrl+A] then copy [Ctrl+C] the text and use the Paste Special, Unformatted Text options to paste the text – which is now free of all formatting – into a new, blank document. You can then apply new styles or formatting to the text as you please. Try experimenting with this technique in other applications, also, such as PowerPoint and Excel. Just remember that it is context-sensitive, so the list of available options will change according to the contents of the Clipboard (if you copied text to the Clipboard, the list of options will contain the options for pasting text, but if you've copied a graphic or picture, the options will be those relevant to graphics).

If your interest is piqued and you want to learn more, go to <http://pubs.logicalexpressions.com/pub0009/LPMArticle.asp?ID=128> for a great example of how to paste unformatted text and record a macro to reduce it to one step, or to <http://pubs.logicalexpressions.com/pub0009/LPMArticle.asp?ID=40>, <http://www.mrexcel.com/tip045.shtml>, http://www.schooldata tutorials.org/paste_special/, <http://office.microsoft.com/en-us/powerpoint/HP10117151033.aspx>, or <http://jwalk.com/ss/excel/usertips/tip059.htm> for more examples of how to use Paste Special in various Microsoft Office applications.

More information on the Paste Special feature of OpenOffice.org can be found at http://wiki.services.openoffice.org/wiki/Documentation/OOoAuthors_User_Manual/Getting_Started/Cutting_copying_pasting_text_and http://www.openofficetips.com/blog/archives/2005/09/paste_special_i.html. Instructions for writing a one-step Paste Special macro for the Macintosh can be found at <http://word.mvps.org/Mac/PasteText.html>.



Even applications such as Dreamweaver 8 have Paste Special commands (see http://www.adobe.com/devnet/dreamweaver/articles/paste_special.html) that help the user with copy, cut, and paste. Once you become familiar with many of the command options, you will begin searching for it in every application you use! To find out if a particular application uses it (if

you cannot immediately locate the command) try searching the Internet using the search *[application name] paste special*. 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 Paste Special feature, try it out. The time you save using it to perform clean additions or a quick revision to a document

might convince you that the time you spent experimenting was worth it and that it was just the assist you needed to speed along your work flow. And while it may not truly *be* magic, your attorneys may think your improved productivity is.

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Pamela Crosby is a paralegal with Kessler & Collins, A Professional Corporation in Dallas, TX.

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Scruples

The Ethics of Holding Yourself Out as Certified

By Ellen Lockwood, ACP, RP

Who is Certified

Most paralegals now have some sort of formal paralegal training. There are certificate programs, associate's degree programs, bachelor's degree programs, and master's degree programs. If you have a degree and/or a certificate from a paralegal program, that information should be included on your résumé. However, do not confuse having a certificate (being "certificated") or degree with being certified. While completion of any reputable paralegal program is a worthy accomplishment, only those who have qualified for and passed a paralegal certification exam may hold themselves out as certified.

Sources of Certification

The Paralegal Division recognizes paralegal certifications from three organizations: NALA, NFPA, and TBLS. Each of these organizations requires completion and approval of an application and payment of a fee before you are qualified to take the exam. Once you have taken and passed a paralegal certification exam, you must continue to meet that organization's certification criteria in order to maintain your certification, including providing proof of CLE.

Use of Certification Credentials

Each organization offering paralegal certification has specific rules for identifying yourself as certified. For example, the cer-

Do not confuse having a certificate (being "certificated") or degree with being certified. While completion of any reputable paralegal program is a worthy accomplishment, only those who have qualified for and passed a paralegal certification exam may hold themselves out as certified.

tification credentials for NALA, NFPA, and TBLS do not include the use of periods (i.e., CP, ACP, RP, and TBLS). It is important to follow the certifying organization's rules regarding use of the organization's certification credential to avoid confusion and possible misuse of the organization's trademark. If you notice someone using certification credentials incorrectly, you should politely point out the error. It is likely the paralegal is just not aware of the error and will appreciate a fellow paralegal's helpful information.

Inactive Certification Status

If you do not meet a certifying organization's requirements to maintain your certification, you may no longer hold yourself out as certified. That means you may no longer list your certification on your business cards, letterhead, signature block, or include certification initials after your name. However, you may list the certification on your résumé as long as you also indicate that the certification is no longer active. For example: *December 1999 – TBLS Certified Paralegal – Civil Trial Law (Inactive)*.

Verification of Certification Status

NALA, NFPA, and TBLS all offer online search capabilities to determine whether someone is currently certified. Certified paralegals should confirm that their information is correct on the certifying organization's website.

Holding Yourself Out as Certified

It is unethical to represent yourself as certified when you are not. Claiming credentials such as certification to which you are not entitled is highly risky as employers and others may easily verify your claims. If any of your credentials are found to be false, you may not just get fired or lose out on a job opportunity, your reputation will be tarnished. After all, if you would misrepresent your credentials, you might very well lie about something else.

You cannot pick and choose which ethical rules to follow. You are either ethical or not. Part of being a professional is always being ethical.



Ellen Lockwood is an Advanced Certified Paralegal in intellectual property by the National Association of Legal Assistants and a registered paralegal by

the National Federation of Paralegal Associations. She is a past President and District 5 Director of the Paralegal Division. Her email is ethics@txpd.org.

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:

Certification is a voluntary act a professional undertakes to demonstrate his or her commitment to a profession, the pursuit of excellence in that profession, and the ability to meet certain standards and requirements. Thousands of industries and organizations administer examinations to individuals who hope to demonstrate their knowledge and proficiencies in their chosen field by meeting the requirements set out for certification. Paralegal certification is no different in its scope and intent than any other type of certification. Paralegals who wish to demonstrate their knowledge and competencies in their chosen career can seek certification through several organizations that award candidates their own copyrighted brand of certification.

However, while certification or specialization is evidence of greater competency and expertise, it also carries with it a higher standard of care for attorneys, doctors,

and other professionals.¹

1. Do you think a court would ever hold a supervising attorney or firm to a higher standard in a malpractice action involving a certified paralegal?

2. If so, is there anything a certified paralegal or specialist can do to minimize this risk?

¹ See "Certification Standard of Care Applies to Certified Attorneys," by Paul B. Geilich, Certification Link, June 2002, a quarterly publication of the ABA's Standing Committee on Specialization. (Available at <http://www.abanet.org/legalservices/specialization/downloads/certlink0602.pdf>)

RESPONSE No, attorneys are required to supervise their employees and the rules concerning paralegals/legal assistants are very clear regarding UPL. I believe this would apply to paralegals with certification, those without, as well as those with any other credentials of higher education.

—Toylaine H. Spencer, Austin

RESPONSE First of all, I don't think a court would ever hold a paralegal, certified or not, liable for any malpractice issue for their behavior. As we all know, our profession **REQUIRES** that we be supervised, at all times, by an attorney. That puts the burden of any liability back on the attorney, not the paralegal. Second, if for some reason the courts begin to hold the paralegal responsible in malpractice claims, then the paralegal profession should begin to license its members. Only then would paralegals be held responsible for their actions. When you start to assess responsibility to the paralegal, then you are also suggesting that the individual is making decisions without the supervision of the attorney and then you are looking at

whether that individual is practicing law without a license. So, to answer the question on how to minimize the risk, the only way would be to license paralegals and require paralegals to carry malpractice insurance. And that is not going to happen in most cases. Again, the law firm where the paralegal is employed carries malpractice insurance for the firm, but we are all required to be supervised by an attorney as we perform our duties to the client.

—Linda Valerius, College Station

RESPONSE I do not believe that a court would hold a supervising attorney more or less accountable or to a higher standard in a malpractice suit where the paralegal was certified because I believe the attorney's responsibility is to supervise the work of the paralegal, therefore, the responsibility ultimately lies with the attorney. The paralegal is under the direct supervision of that attorney.

As far as minimizing the risk, I do believe that the paralegal should follow the rules of their profession and make sure all their work has been reviewed and approved by the attorney as to not violate the rules. A paralegal that is guilty of unauthorized practice of law would definitely be a risk for the attorney and the attorney could be guilty of malpractice if they are not supervising the paralegal properly and thus enabling violations of the rule.

—Candi Wilson, Austin

RESPONSE I believe that a court may hold a supervising attorney or firm to a higher degree for a certified paralegal than for a non-certified paralegal, arguing that the certified paralegal has shown greater competence in that area of law as shown by the certification.

The only suggestion might be to put something in the employment agreement to help limit any higher standard liability - that way if there is a malpractice action, the firm could argue that they had a contract that limited the standard for potential malpractice liability that was negotiated between the parties.

—Jeff Goldstein, Austin

RESPONSE My answer is "No" to ques-

tion No. 1, because regardless of whether the paralegal is certified or not, the attorney is ultimately responsible for the paralegal's actions and/or omissions for which the attorney's liability insurance carrier would be covering for malpractice. Ultimately, there is nothing a paralegal (certified or otherwise) can do to minimize the risk because their work is directed exclusively by the attorney they work for.

—Kim Chambers, *Austin*

RESPONSE 1. Yes

2. I don't believe this involves any more or less than any other "certification" should call for - or ANYTHING, for that matter, and that is to PAY ATTENTION.

—Carol Fell, *Austin*

RESPONSE Whether a paralegal is certified or not, it is given that he or she should follow ethical practices under an attorney's supervision. While the level of work a certified paralegal is given could be different than that of others, they each still have like obligations. For example, to bill for "substantive" work is something we are each obligated to do, and I think the liability remains the same even if a

judge decided to award higher sanctions on a specific case.

—W. Jahna Chism, *Austin*

RESPONSE I don't believe that a court would hold a supervising attorney or a firm to any higher standard than they do now, which is that ultimately the supervising attorney or firm bares the burden of accountability, but in the event that it did, a certified paralegal could carry insurance, just as a notary does, or any other licensed professional.

—Patti Claar, *Plano*

RESPONSE No.

—Melanie F. Johnson, *Houston*

RESPONSE No. Since a licensed attorney is ultimately responsible for the work of any paralegal/legal assistant/secretary etc., it is unlikely the qualifications of the actual "worker bee" would be a part of the decision process.

—J. Lombard, *Plano*

RESPONSE There is a huge factor that is not being considered in this question. That factor is that all the fields identified—attorneys, doctors—involve licens-

ing. Certification is simply a particular organization's way of recognizing individuals who have met that organization's criteria for excellence. It is not a governmentally recognized qualification.

I find it hard to believe that a court would recognize certification as a higher standard in a malpractice action. Malpractice actions are those allowed for by law based on licensure regulations.

—Lisa Sprinkle, ACP, *El Paso*

RESPONSE 1. Yes

2. Keep abreast of changes in the area of law of their expertise and seek out clarification from the attorney in charge on all malpractice cases as they unfold. On all malpractice cases, the paralegal should take it upon themselves to double-check the guidelines of that particular case with the attorney, even though they may have had a prior similar case. You want to be sure if an attorney is sanctioned for malpractice, your work as a paralegal is not the root cause of that problem. Likewise, keeping abreast will aid you in assisting the attorney in a more meticulous, professional manner.

—Willie Williams, *Columbus*

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Very Interesting . . . but Complicated

By Craig Hackler, Financial Advisor, Raymond James Financial Services

Remember the good old days, when Artie Johnson was on "Laugh-In" and everyone understood how interest expense deductions worked? Have you noticed that nobody, not even the politicians, claims that the Tax Reform Act of 1986 was really a "simplification" of the tax code. If you take a look at the rules for deducting interest expense you will long for the days when the country thought "say good night Dick" was funny.

Interest expense falls into one of five categories; personal interest, investment interest, interest on a home, interest on a passive investment and interest incurred pursuing an active trade or business. Whether, and how much, interest will be deductible now depends on how the proceeds of the loan were used as well as a few other factors. A complex series of tracing rules may have to be used to determine if there is an adequate "paper trail" to allow for the expense to fall into a permitted category. The first classification of interest expense is personal interest. Personal interest includes not only such things as credit card interest incurred buying items at the department store, but also any other interest unless it can be made to fit under one of the other four categories. Personal interest is not deductible.

Investment interest expense is interest incurred to purchase assets that produce income or capital gains. The general rule is that investment interest is deductible to the extent of net investment income in excess of the 2% adjusted gross income floor. "Net investment income" is the gross income from investments (taxable interest, dividends, net capital gains, etc.) less investment expenses, other than interest.

Home mortgage interest includes interest secured by a mortgage on your first or second home. If the debt existed on or



before Oct 13, 1987, the debt is 100% deductible regardless of the amount or whether it is a first or second mortgage. For mortgages incurred after that date, the interest is fully deductible to the extent of \$1 million in debt to acquire or improve the home and up to \$100,000 in home equity debt, regardless of how the proceeds of the loan are used. Special rules apply to refinancing.

The passive loss rules also impact on the deductibility of interest. Interest expense incurred within the passive activity (e.g. the mortgage on the office building that's the major asset of the partnership) is considered to be a part of the net passive income or loss of the activity. Interest incurred to acquire ownership in a passive activity is considered to be a passive loss. Thus, it is only deductible to the extent of passive income. For certain high income

taxpayers, interest expense deductions, other than investment interest, may be subject to a phase-out rule.

Debt incurred in the conduct of an active trade or business is fully deductible. This deduction is not phased out. The business must be a genuine business, not a hobby. Also, rental real estate activities, no matter how much time and effort they take, may not be considered an active trade or business.

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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