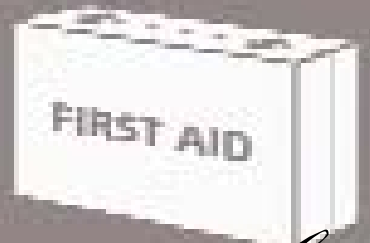


SUMMER 2008 VOL. 14 NO. 2

TPJ

Texas Paralegal Journal



How to Get Help Paying Nursing Home Costs





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PRESIDENT'S *Message*

Rhonda Brashears

Greetings Paralegal Division Members: The Paralegal Division's Annual Meeting took place on June 27, 2008 in Houston, Texas. It was a wonderful meeting with informative CLE, plenty of vendor booths to peruse, and a very entertaining luncheon. When the scheduled key note speaker was detained out of town, one of the Annual Meeting Committee members called upon Richard "Racehorse" Haynes to fill in and fill in he did. His presentation on representing high profile clients was both funny and enlightening.

Following the Annual Meeting the Incoming Board of Directors began their board meetings. The 2008–2009 Board of Directors is as follows:

Rhonda J. Brashears, CP, President
Stephanie Hawkes, RP, CIPP, President-Elect
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Parliamentarian and District 12 Director
Cynthia Williamson, CP of Nacogdoches—District 14 Director
Clara Buckland, CP of El Paso—Secretary and District 16 Director

Please take a moment to get more familiar your 2008–2009 Board of Directors on pages 21 of this issue, additional information about the Board and how to contact them can be found on the Paralegal Division website at www.txpd.org under "Contact." The Board discussed the plans and projects for the Division over the next year. The Directors are very excited about this upcoming year and have already gone back to their districts to get started working with the local Division Committee volunteers to provide their members with CLE, information and representation. Several local CLEs have already been planned and some have even already taken place. Remember to check the CLE calendar at www.txpd.org for updates on CLE in your District.

As President of the Division I have several goals of my own. I have appointed Patti Giuliano, Immediate Past President, to continue to serve the Division, its members and our communities by working to expand pro bono services throughout the state of Texas. I have also appointed a committee to investigate compiling and providing webinars to Division members in an effort to expand the CLE opportunities to our members, so be watching for information on this upcoming new member benefit.



I have investigated various locations for the 2009 PD Europe trip, polled several Division members and have determined that our destination will be Greece, April 25–May 2, 2009

visiting Nauplia, Mycenae, Corinth, Athens and Delphi. This, like all of the other trips, will be a wonderful time to see a beautiful country and get to know some of your fellow Division members on a completely different level. See the informational ad regarding this trip on page 2 of this issue. For additional information and to sign up visit the Paralegal Division website at www.txpd.org.

The 2008 TAPS Planning Committee continues to work on plans for TAPS 2008 to be held September 17–19, 2008 in San Antonio! This is going to be another wonderful event with a possible 14 hours of CLE and two great socials. It is NOT too late sign up, visit the website at www.txpd.org to register. I look forward to seeing you there.

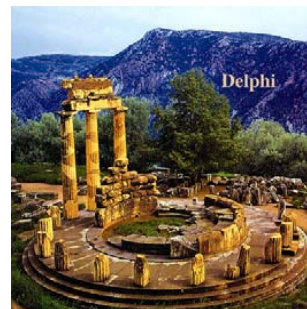
I am excited about serving as your President over the next year. If you have any comments or concerns please contact me at president@txpd.org.

Rhonda J. Brashears
President Paralegal Division



PARALEGALS FLY TO GREECE

April 25 – May 2, 2009 (Seven Days and Six Nights in Nauplia, Athens and Delphi)



Saturday, April 25

Departure from the United States

Sunday, April 26

Arrive in Athens and meet your ACIS Tour Manager. Drive south to Nauplia, once the Venetian capital of Morea, spectacularly built around a rocky peninsula with a castle on top. Check into your hotel and relax. This evening, enjoy a Welcome Dinner with wine. (D)

Monday, April 27

Enjoy a walking orientation with your Tour Manager this morning. Next you will have the opportunity to taste some locally produced olive oil. Those with a head for heights may wish to climb the 999 steps to the Palamidi Fort which sits above the town and was built by the Venetians during their second occupation. This afternoon you will visit the great Theater of Epidaurus. Test the most famous acoustics in the world and visualize 14,000 ancient spectators who sat here all day long, held spellbound by the tragedies of Sophocles or comedies of Aristophanes. (B) Dinner on your own.

Tuesday, April 28

Today drive to Mycenae to see mainland Europe's oldest city, including the Lion Gate, Royal Tombs and Acropolis. Drive to Corinth, once the richest city of Greece, notorious for its excesses. Visit one of the world's first shopping malls, complete with cafés, fountains and temples. Continue to Athens. Lunch at a

countryside Greek taverna is included today instead of dinner. (B,L) Dinner on your own.

Wednesday, April 29

A morning sightseeing tour reveals the glory of Greece. Ascend the Acropolis for a visit of the Parthenon. See the Agora and the National Archaeological Museum's dazzling treasury of Greek art, including the Mask of Agamemnon and mighty Poseidon. You will also enjoy entrance to the exciting new Acropolis Museum. The afternoon is free to take snapshots from atop Mount Lycabettus. (B) Dinner on your own.

Thursday, April 30

Drive over rugged mountains to Delphi, where the famous oracle once advised ancient kings and statesmen. A local guide shows you the site, including the Temple of Apollo and stadium. Return to Athens in the late afternoon. Lunch is included instead of dinner today. (B,L) Dinner on your own.

Friday, May 01

Spend a day further exploring Athens or choose an **optional** Saronic Gulf Cruise with lunch included (\$129 per person, minimum 15 payees required). Evening Farewell Group Taverna Dinner including Wine. (B,D)

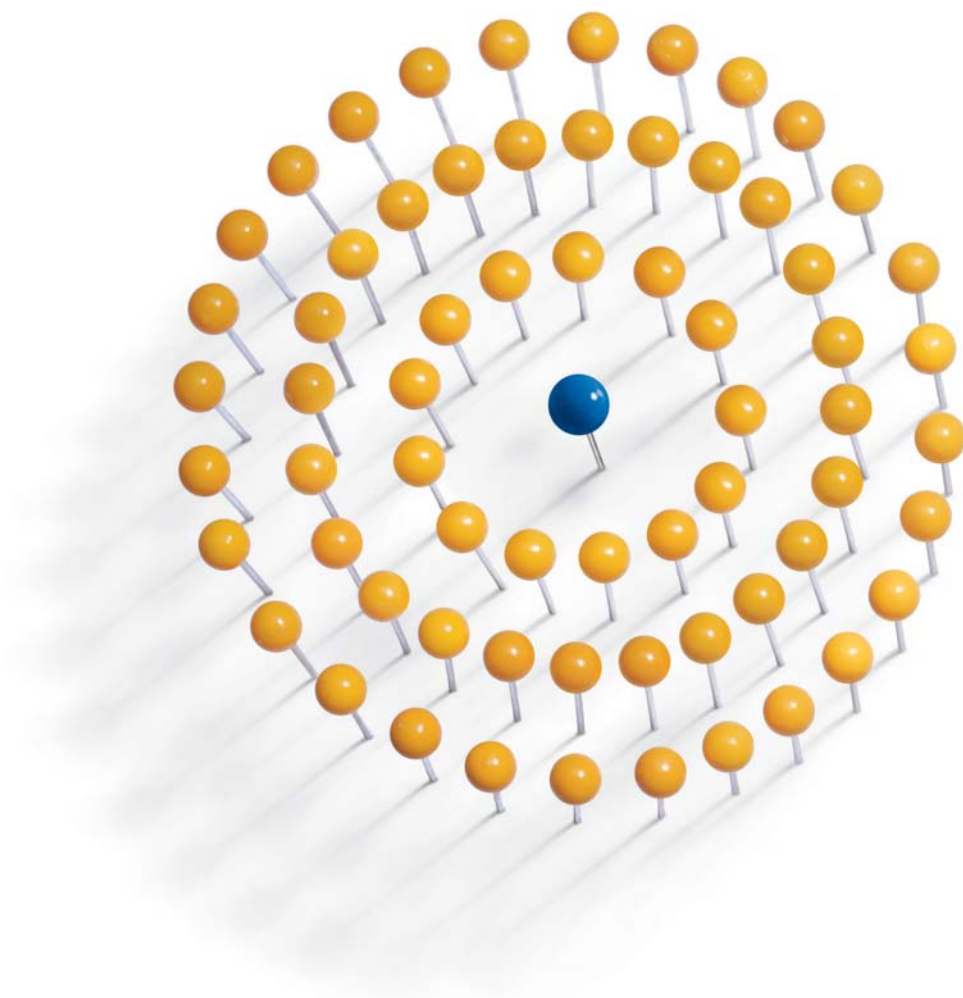
Saturday, May 02

Transfer to airport for return flight to the United States.

Fees: Departure from DFW is \$3,676 (includes departure tax & fuel charge and non-refundable Registration Fee of \$300). Departure from Austin is \$3,716; San Antonio is \$3,726; and Houston is \$3,726 (includes departure tax & fuel charge and non-refundable Registration Fee of \$300). Upgraded insurance can be purchased: Comprehensive - \$120 and Ultimate - \$200; Over 66 – Comprehensive - \$220 and Ultimate - \$300 (insurance covers the entire eight days of travel). Tips for tour guide (\$4 per day) and bus driver (\$2 per day while using bus) is not included. Small contingency fee may be added in January 2009 for fuel surcharge. **Fees based on 20 persons.** Airfare and Hotel (double room) with daily breakfast is included in price as well as two lunches, two dinners, olive oil tasting, and all tours listed above.

Payment Schedule: Deadline for registration is November 1, 2008; Initial deposit is \$300; second payment of \$300 is due 45 days following registration payment; balance due on February 15, 2009.

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



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Focus on . . .

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EDITOR'S *NOTE*

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

There are so many matters in light in which we have no say nor exercise any control. However, change is not a "four letter word." That change can be a positive factor is exemplified by the new PD Board and EC as they begin implementing plans to continue to keep the PD in the forefront of our profession. Renewed enthusiasm and new insight are the benefits this yearly change contribute to the success of the PD.

Learn more about the Division's leaders for the year in this issue. You'll be hearing and reading about their hard work as the year progresses. Hopefully, it will inspire you to volunteer your talents, because the Division's best asset is its members.

Our new leaders have vowed to accept the challenges and responsibilities of their positions. Now we, as members, can step up to carry the vision forward.

Announcing the New Individual Pro Bono Tracking Tool!

As a Member of the Paralegal Division (PD), you can now track your pro bono hours as well as your CLE hours in your individual member record on the PD website. This repository can be a very helpful tool in managing both your pro bono and continuing legal education (CLE) hours. We will also be able to use this tool to tabulate and report on the pro bono efforts of our members to the State Bar of Texas. You can enter your hours by going to www.txpd.org, choose the **Members Only**-tab, choose **Directory**, and choose either **View My Pro Bono Records** or **View My CLE Records**, and sign-in. To enter the hours for either *Pro Bono* or *CLE*, click on "Add a Pro Bono (or CLE) Item to Your History."

Patricia Giuliano, Chair
Paralegal Division Pro Bono Ad Hoc Committees

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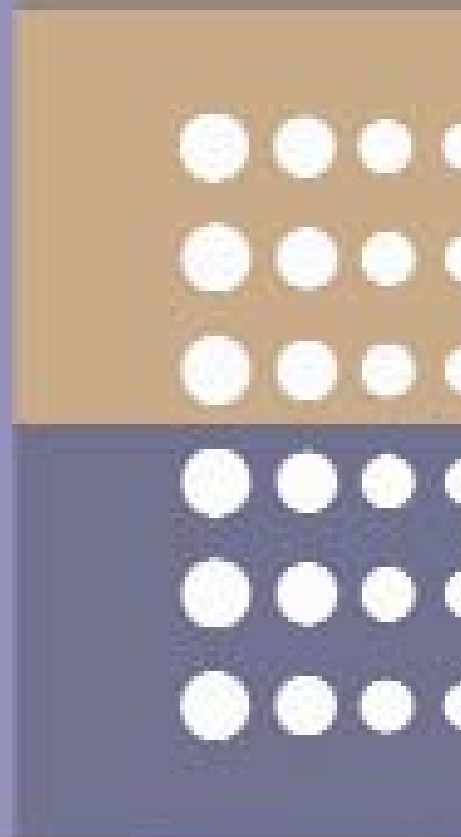
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DEADLINE FOR SUBMISSION OF ARTICLES FOR THE FALL ISSUE IS OCTOBER 15, 2008.

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How to Get Help Paying Nursing Home Costs

By H. Clyde Farrell



Because of the high cost of nursing home care—an average of almost \$4,000 per month in Texas at this writing—most people who go into nursing homes for extended times will sooner or later need help from the Medicaid program to pay the nursing home. In all, about 72% of Texas nursing home residents are qualified for Medicaid, and 94% of Texas nursing homes are “Medicaid facilities.”

For the reasons discussed below, people who can afford long term care (or who can purchase long term care insurance) are usually best advised to avoid becoming eligible for Medicaid. It is also true that most people who need some degree of long term care do *not* need *nursing home* care. Therefore, this discussion is most helpful to those persons who need *nursing home* care and *cannot afford it*. Unfortunately, because of the high cost of such care, many are in that position.

What are the financial requirements for eligibility for Medicaid nursing home care?

The basic requirements are for low income (at this writing, less than \$1,911 per month for an individual or \$3,822 for a couple who are both on Medicaid) and very limited assets (called “resources” in Medicaidese) (not more than \$2,000 worth of “countable” assets for an unmarried person at this writing, but see below for married couples). Those dollar figures are subject to frequent changes, and the income limits are not absolute, as explained below.*

Determining eligibility is further complicated by the fact that certain income and assets are exempt from the limits. For example, at present, exempt resources (assets) for an unmarried person include (among others) a homestead to which the applicant intends to return (usually limited to \$500,000 in equity), any amount of term life insurance, an automobile of any value, a burial contract or policy to the extent it is worth less than \$1,500 (or an unlimited amount if it is nonrefundable), and some other exemptions.

A married couple with one spouse *not* living in a nursing home or other medical institution and not on Medicaid likewise may own one car of unlimited value; household goods of unlimited value; burial plots of unlimited value for certain “immediate family” members; and the other exemptions that apply to an unmarried person. If both spouses live in a nursing home on Medicaid, the same exemptions as for unmarried people apply, and the couple can have no more than \$3,000 in total countable resources. If

*This article is current as of January 1, 2008



both spouses live in a nursing home (or separate nursing homes) but only one is on Medicaid, the one not on Medicaid can have unlimited income and resources—including even resources transferred (without penalty) from the spouse on Medicaid.

One way of accelerating eligibility for Medicaid is to transfer funds into exempt assets (such as improvements to the homestead) and pay debts (for example, the mortgage debt on the homestead).

Can a person become eligible for Medicaid by giving away their property?

If a person transfers property for less than market value for the purpose of becoming eligible for Medicaid, they are “penalized” by being ineligible for Medicaid for one day for every \$122.50 difference between the market value of the property and the amount they received for it. This amount changes from time to time, as it is the amount HHSC estimates it costs, on the average, for private-pay nursing home care in Texas.

Under a new federal law, for gifts made on or after February 8, 2006, the ineligibility period begins when you are in a Medicaid-certified nursing home and *would* meet all the other requirements for Medicaid eligibility *but for* the transfer. The maximum penalty period, however, is 60 months from the date of the transfer, no matter how much property is transferred, provided that no Medicaid application is filed for at least 60 months after the calendar month of the gift. For gifts made before February 8, 2006, the ineligibility period began on the first day of the calendar month in which the gift was made.

For example, if property worth \$10,000 is given away all at once, the person who gives it away is ineligible for Medicaid for an 81-day period. If the gift was made on or after February 8, 2006, that period does not *begin* to run until the giver is in a nursing home *and* has no more than the Medicaid limit of assets and income *and* has a medical necessity for nursing home

care *and* files a Medicaid application. If the gift was made before February 8, 2006, the ineligibility period has already begun when the gift is made—on the first day of the calendar month during which it was made.

If property worth \$10,000 is sold for \$3,000, the seller is ineligible for 57 days (there is a gift of \$7,000). However, because of the 60-month maximum penalty period, a gift of \$300,000 worth of property to one or more individuals will result in a penalty of only 60 months, provided no application is filed during that time. (The maximum penalty period, provided no application is filed within the period, is 36 months for transfers made before February 8, 2006, and the “start date” of the penalty period is the first day of the month of the gift.)

Are there any reasons not to give away property to become eligible for Medicaid?

The decision as to whether and how to give away property to become eligible for Medicaid is almost always complex. It requires the advice of a professional who understands both the complicated state and federal rules, including sometimes-hidden exceptions, and the values of the client. Not only is the law complex and constantly changing, but the following considerations, among others, may argue against such a transfer:

- Such a transfer may be against the deeply held values of the person involved.
- If the resources involved are sufficient to pay for the nursing home stay, transferring them may deprive the client of the opportunity to stay in one of the better homes, some of which are not certified for Medicaid.
- Qualifying for Medicaid almost always rules out staying in an Assisted Living Facility, which is generally more desirable if one can meet your care needs (because with the Texas Legislature’s recent cuts in Medicaid

funding, it is almost impossible to get into an Assisted Living Facility on Medicaid).

Another disadvantage of Medicaid is that when the beneficiary goes to a hospital from the nursing home, they may not be able to return to the same nursing home, in the event that it fills up while they are in the hospital; and they are likely not to be able to return to the same room.

- The beneficiaries of the transfer may use up the property, undergo a divorce, have it seized by creditors or die leaving it to other people, so the person making the gift does not have enough money available to pay for nursing home care during the “penalty period” of up to 60 months. (This risk can be minimized by having an attorney create a trust that will provide substantial legal protection, or implementing other protective strategies.)
- If the transfer is of property (such as real estate or stock) worth substantially more than when it was purchased, it may result in a capital gains tax liability that might have been avoided by holding the property until death. (This can usually be avoided by reserving certain “interests” in a deed or trust instrument.)
- If the person giving away the property does not meet the “medical necessity” requirement (discussed below), the gift will not result in eligibility anyway (except possibly for certain limited home care programs).

Family members may disagree as to who should receive the property; and those who feel most passionately that they should get it may be the least capable of managing it wisely.

The law may change at any time to extend the penalty period, invalidate trusts used, or otherwise make the planning inef-

(Continued on page 10)

SUSTAINING MEMBER PROFILE

Innovative Legal Solutions, Inc.

Innovative Legal Solutions, Inc. is a full-service litigation support and document services company based in Houston, Texas. Founded by Alicia Smith in 1992 under the name Associated Video Services, Innovative was certified as a women's business enterprise by the Women's Business Enterprise National Council in 2006.

Innovative has earned a reputation for timely and cost-effective services throughout the State of Texas. While the company began as a video services company, service offerings have expanded and now include record collection, court reporting, videography, process service, document copying and scanning,

and e-discovery services.

With the prevalence of electronic services in the legal community, Innovative strives to stay at the forefront of the industry. Law firms and corporations demand an increasingly high level of technical expertise from vendors, yet also require that their budget constraints be observed. This is an area in which Innovative excels.

"We believe that the most important aspect of our business is the delivery of quality services to our clients," says Alicia Smith. "There are plenty of litigation support companies out there, but few who can deliver a high level of serv-

ice day-in and day-out." Smith also adds that "Our focus is on identifying emerging technologies that will improve operating efficiencies and the client experience. More importantly, we always are looking for ways to enhance the productivity of our clients while contributing to their shareholder value."

Innovative is positioned to assist clients with their litigation support and document services needs anywhere in the United States. For more information on Innovative, visit its website at www.myinnovative.net or call us at 713.658.0802.

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(as of August 20, 2008)

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fective—perhaps even retroactively to transfers made in the past.

You may give away your property for any reason, as long as the transfer is not motivated to any degree by intent to qualify for Medicaid, and there should be no adverse effects on your Medicaid eligibility. For example, you can make tax planning gifts or gifts to avoid probate, as long as you are not doing (even in part) to qualify for Medicaid. Likewise, you can make certain gifts that do not create a transfer period even if they *are* intended to qualify you for Medicaid (such as gifts to your spouse). However, if you presently have a need for long term care or anticipate such a need in the near future, you may have difficulty proving the transfer was *not* to some degree motivated by intent to qualify for Medicaid.

What can I do if I have too much income for Medicaid eligibility and too little income to pay for nursing home care?

At this writing, persons with more than \$1,911 but less than about \$4,000 in monthly income have too much income to qualify for Medicaid but too little to pay for the average cost of nursing home care. If they otherwise qualify for Medicaid, they are in what has become known as the “Utah Gap” (named after certain box canyons in Utah from which there is no way out). That is because Texas is one of ten states that have an “income cap” on eligibility but fail to provide for a “medically needy” program for elders.

However, there is always a way out. Sometimes, sources of “income” can be sold and converted to “assets” that can then be transferred or “spent down” until the owner has low enough assets to be eligible. In other cases, pension income may be transferred to the spouse at home by means of a “qualified domestic relations order.” In any case, countable income can be reduced by transferring it into a “Miller Trust” (also called a “Qualified Income Trust”). Such planning requires up-to-date knowledge of the law and careful

drafting of the necessary legal instruments.

If my spouse needs to go to a nursing home, do I have to use up all my assets before he/she will be eligible for Medicaid?

About one in twenty Medicaid recipients in nursing homes have a spouse who is not in a nursing home. At one time, this “community spouse” had to become impoverished in order for the other spouse to be eligible for Medicaid. Fortunately, a federal law provides some relief for the “community spouse.”

Basically, the “community spouse” is entitled to keep a “protected resource amount.” The starting point is to subtract from all the couple’s property (community and separate) certain exempt property including homestead, household goods, personal goods, one car, and burial funds (as defined and limited in the regulations). The property is valued as of the first day of the first month one spouse is in a nursing home. The “protected resource amount” is one-half of the remaining amount, provided it cannot (at this writing) be less than \$20,880 nor more than \$104,400. These figures change with inflation every year.

In addition, the community spouse is allowed to keep a limited amount of countable income, known as a “spousal needs allowance.” In the year 2007, the maximum amount is \$2,610 per month. If the combined countable incomes of both spouses (after certain deductions) exceed the “spousal needs allowance,” the excess amount (to the extent it consists of income of the spouse in the nursing home) must be paid to the Medicaid program (as “applied income”). There is also a “needs allowance” for certain dependents.

If the combined incomes of the spouses are not sufficient to provide the community spouse the full “spousal needs allowance,” the couple has a right to obtain an increase in the protected resource amount sufficient to produce enough income to provide the spousal needs allowance. For example, if the spouses’ combined noninvestment

incomes (after certain deductions) total \$1,700, the spouse at home (with, let’s say, an income of \$1,200) can keep enough assets to produce an additional \$910 per month, at the rate of interest being paid locally on one-year certificates of deposit. In this example, if CD’s are paying 4.0% interest, the spouse at home can keep \$273,000.

Until September 1, 2004, Texas law allowed an increased “Protected Resource Amount” even if the net combined incomes of both spouses exceeded the spousal needs allowance (now \$2,610)—as long as the income of the spouse at home was significantly less. That is still possible in cases in which the institutionalized spouse had a total stay of 30 days or more in a nursing home and/or hospital commencing *before* September 1, 2004.

Are there non-financial requirements for receiving Medicaid?

In addition to financial requirements, most Medicaid programs require that the applicant show a “medical necessity” for nursing home care. That is, the applicant must have a medical disorder or disease requiring attention by registered or licensed vocational nurses on a regular basis. Inability to attend to “activities of daily living,” such as bathing, grooming and eating, is not sufficient in itself. Ironically, in order to receive home care under the “Community Based Alternatives Program” of Medicaid, you have to prove that what you really need is nursing home care meeting this standard. However, it is possible to qualify for home care under the “Community Care” programs without proof of “medical necessity”—just that you need a certain level of help with “activities of daily living.”

If I apply for Medicaid, will the government take everything I have?

The Medicaid program never takes property away from anyone—at least, not during their lifetime. It just refuses to provide help until you meet the program’s require-



ments, which means (unless there is a spouse at home) your savings have run out.

Under the new “estate recovery” program, however, Medicaid can sometimes force sale of a Medicaid recipient’s residence after their lifetime. This program applies only to people who have received Medicaid benefits at or after age 55 and first qualified for Medicaid in an application filed on or after March 1, 2005. People who filed a Medicaid application before that date are exempt from estate recovery, provided the application led to certification of eligibility. There are some important exemptions and waiver provisions. For a summaries, Frequently Asked Questions, the state, rules and forms, go to http://www.dads.state.tx.us/services/estate_recovery/index.html#rules.

How can a lawyer help with Medicaid planning?

A lawyer who is knowledgeable about planning for long-term care can help in the following ways:

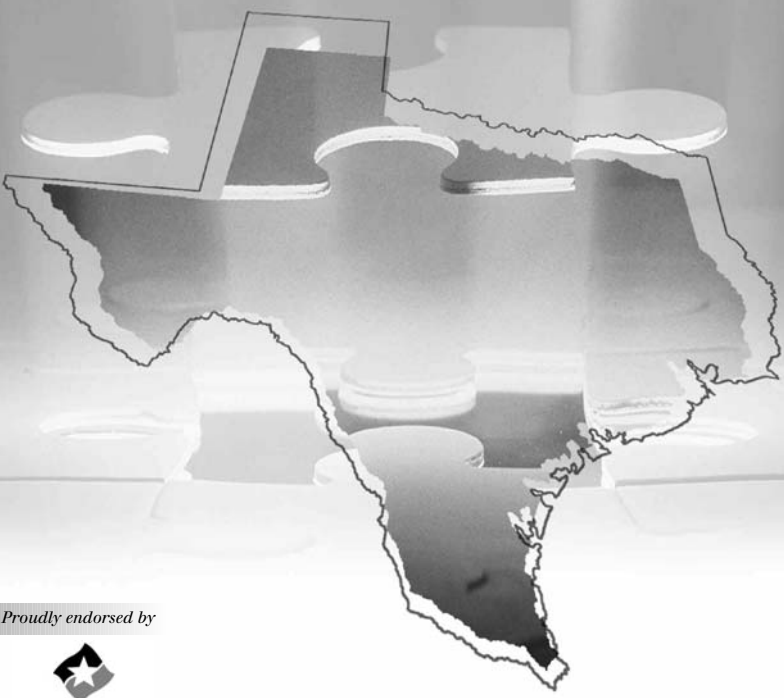
- By helping you decide whether or not becoming eligible for Medicaid is consistent with getting the best care you can afford
- If Medicaid eligibility is appropriate, by showing you ways of qualifying sooner rather than later
- By helping you avoid small mistakes that cost big money (because each month’s delay is likely to cost \$4,000 or more in nursing home expenses)
- By helping you understand complex rules and formulas you need to know, and keeping you from wasting time with information you don’t need
- By giving you the peace of mind of knowing you are considering all your own needs and those of your loved ones and that you are utilizing all the resources available

For more information on Medicaid and other Elder Law topics, go to www.clyde-farrell.com.


H. Clyde Farrell is Certified as an Elder Law Attorney by the National Elder Law Foundation and is a Certified Financial Planner.

Nothing contained in this publication is to be considered as the rendering of legal advice for specific cases. This article is for educational purposes only. Readers are responsible for obtaining such advice from their own legal counsel.

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Preventing Impoverishment of the “Community Spouse”

By H. Clyde Farrell



When one spouse needs long term care, it often spells disaster for the other spouse. In addition to the inevitable emotional loss, the couple is suddenly faced with *additional* bills of \$3,000 to \$5,000 *per month*. No wonder that 78% of Texas nursing home residents are on Medicaid—90% of whom became impoverished and qualified for Medicaid in less than 26 weeks!

History of Protection of the Spouse at Home

Until 1989, all the assets and income of both spouses were counted by the Medicaid program. Therefore, neither spouse could qualify until *both* were impoverished. As a result, people who had been married for 50 years—and who loved each other—were forced to go to the District Court to get a divorce, to protect the one left at home.

Fortunately, federal protections against such “spousal impoverishment” now make such tragedies unnecessary—provided you know the complicated rules for obtaining those protections. Here is a very brief summary of those rules. (The dollar amounts are effective in Year 2008 and will change on January 1, 2009 with inflation.)*

How Much Can We Keep?

First, the “community spouse” is entitled to keep a “protected resource amount.” The starting point is to subtract from all the couple’s property (both community and separate) certain exempt property including the residence, household goods, personal goods, one car, and certain funeral and burial arrangements. The non-exempt property is valued as of the first day of the first month one spouse is in a nursing home. The “protected resource amount” is one-half of the total value of the non-exempt property, provided it cannot (in 2008) be less than \$20,880 nor more than \$104,400—unless it is increased during the application process, as explained below.

How Can We “Spend Down” Quickly?

Take for example a couple with \$100,000 in countable assets, who will be allowed a “protected resource amount” of \$50,000. The one who needs Medicaid can become eligible as early as the first day of the second month in the nursing home by “spending down”

* This article is current as of January 15, 2008.



\$50,000 in one or more of the following ways:

- Pay debts (such as a home mortgage)
- Buy “exempt” property, such as home improvements or an automobile
- Buy an irrevocable annuity meeting certain specific requirements, such as paying in equal amounts monthly in the name of the spouse at home

Some annuity sales organizations promote annuities as the best solution in all cases. However, when they have the option of “increasing the Protected Resource Amount,” (discussed below), most couples choose to protect all their assets without buying an annuity. Usually, the annuity option is preferable only when the “Protected Resource Amount” cannot be increased. Read on for more information on that.

What Happens to Our Income?

In addition, the community spouse is allowed to keep a limited amount of countable income, known as a “spousal needs allowance.” In 2008, the maximum amount is \$2,610.00 per month. If the combined countable incomes of both spouses (after certain deductions) exceed the “spousal needs allowance,” the excess amount (to the extent it consists of income of the spouse in the nursing home) must be paid to the Medicaid program; *provided* the community spouse can keep *all* income coming in her or his name, without limit. Here are some ways the community spouse’s income can be protected:

- Shift pension income of the Medicaid-eligible spouse to the community spouse (usually requiring a court order). (This is not necessary if the spouse at home can have just as much income through the use of a “Miller Trust.”)
- Request an increase in the spousal allowance to prevent hardship

- Transfer all investments to the community spouse

Although these protections are most often applied when one spouse needs nursing home care, they are also available (to some extent) for those needing home care under the Community Based Alternatives program.

How Can We Increase the Amount We Can Keep?

If the combined incomes of the spouses are not sufficient to provide the community spouse the full “spousal needs allowance,” the couple has a right to obtain an increase in the protected resource amount. They will be allowed to keep an amount sufficient to produce enough income to provide the spousal needs allowance of \$2,610.00 for the spouse at home.

For example, if the spouses’ combined noninvestment incomes (such as Social Security and pensions, after deducting the personal needs allowance of \$60) total \$2,100, the spouse at home can keep enough assets (to the extent they own enough) to produce an additional \$510 per month, at the rate of interest being paid locally on one-year certificates of deposit. In this example, if CD’s are paying 4.0% interest, the spouse at home can keep \$153,000. If CD’s are paying 3.0% interest, they can keep \$204,000.

Moreover, if the institutionalized spouse first went into a nursing home and/or hospital for a stay of at least 30 days, before September 1, 2004, a more generous rule applies. Even if the net combined incomes of both spouses exceed the \$2,610.00 level, it may still be possible to keep more than the standard “protected resource amount,” by “shifting” some income to the cost of nursing home care.

To increase the “Protected Resource Amount,” the applicant spouse must request it and must sign certain important forms. Those forms determine how much the couple can keep and how much must

be paid to the nursing home. The rules and calculations are quite complex, and the Medicaid program often inadvertently fails to offer this benefit or makes mistakes in the calculations. An Elder Law attorney can help ensure this benefit is protected and that the application is not denied unnecessarily.

How can a lawyer help with Medicaid planning?

A lawyer who is knowledgeable about planning for long-term care can help in the following ways:

- By helping you decide whether or not becoming eligible for Medicaid is consistent with getting the best care you can afford
- If Medicaid eligibility is appropriate, by showing you ways of qualifying sooner rather than later
- By helping you avoid small mistakes that cost big money (because each month’s delay is likely to cost \$4,000 or more in nursing home expenses)
- By helping you understand complex rules and formulas you need to know, and keeping you from wasting time with information you don’t need
- By giving you the peace of mind of knowing you are considering all your own needs and those of your loved ones and that you are utilizing all the resources available

For more information on Medicaid and other Elder Law topics, please visit us at www.clydefarrell.com.

H. Clyde Farrell is Certified as an Elder Law Attorney by the National Elder Law Foundation and is a Certified Financial Planner.

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SharePoint—Changing the Game

by Julie Wade

There's a relatively new product out of Redmond that could change law firm management as we know it today. Microsoft SharePoint, the ultimate collaboration and case management tool, is starting to be used by AmLaw 100 and will filter its way down into everyday use by most law firms within a few years.

SharePoint portals are completely secure internal Web sites with a central document library for accessing shared workspaces and documents, as well as housing specialized applications such as discussion boards, calendars, task lists, contact information, alerts, and much more.

I was introduced to SharePoint at an all day conference hosted by AIIM in Houston back in April 2008. I learned that Enterprises are extensively using SharePoint portals for their records management compliance efforts. So, I was anxious to talk with someone who is actually using SharePoint within the law firm setting. I wanted to see if law firms are going to incorporate with the Enterprise and their records management SharePoint portals. Fortunately for me, Andy Jurczyk, who is the Chief Information Officer of Sonnenschein Nath & Rosenthal LLP, agreed to talk with me about SharePoint for this column. Mr. Jurczyk is responsible for the strategic planning and direction of technology for Sonnenschein, and is equally excited about SharePoint's future within the law firm setting as I am. Mr. Jurczyk told me that he thinks there is a compelling argument for SharePoint because most all of his AmLaw 100 CIO counterparts are thinking about how to utilize SharePoint portals.

In a nutshell, Microsoft SharePoint is the law firm's first total content management repository that can be used to handle everything from document management

and conflicts checks, through records management and archiving, and project management of document reviews and productions.

Sonnenschein currently has over 6 million documents full-text indexed in its SharePoint servers, according to Jurczyk, "and all new firm business is ported into SharePoint as well."

Microsoft SharePoint streamlines your communications process and helps you collaborate on documents by providing a secure place to house large document collections, collaboratively edit any specific documents you are working on with team members, clients and experts, and allows you to replace long strings of email conversations about relevant documents and the whatnot with an efficient use of the discussion board feature of the site.

"SharePoint will become one of those products you rarely get to see that become game changing," Jurczyk said, "in the same sense that email did for us years ago; because, for the first time we have a viable tool that provides us with an unprecedented capability to search information, and we have the ability to pull that information from various databases into a single, easy-to-use web interface."

Other nifty applications that can be used on the Web portals are your case calendars and task lists. The bottom line is that you can create just about anything you want to on a SharePoint site. They are as individualized and customized as your cases and teams. Because you have 100% control over the access and privileges to the information housed on the internal Web sites, virtually all information is effortlessly managed and shared with the people who need to have access to it.

"There's a lot you can do with this product—there is a lot of flexibility," Jurczyk said. "We like the consistent user interface that provides an access point into

many of the firm's systems, and aggregating the data is easy." I am anxious to see if law firms tap into their client's SharePoint sites to use them as an extension for future document productions.

Third-Party Enterprise software developer, EMC Corporation, has created SharePoint applications for the Enterprise for records management that allow you to search across platforms and servers, house relevant search results, and lock the files down on the SharePoint portal. So you can view relevant files, tag, sort, filter and code; but, you cannot save over a document, or move a file from the site at all. This means there won't ever be lost emails or privileged information leaking out again with SharePoint. EMC has also developed eRoom, a SharePoint portal for use by law firms in collaborating on documents with their clients, team members or experts.

Mr. Jurczyk thinks the largest possible impact SharePoint may have for the law firm is to change the search paradigm for us. "I think it will affect what production houses do for us. More and more of the information that is viable is electronic. We will see much less OCR work. SharePoint is capable of creating a full-text searchable index of electronic records that are available from many disparate data sources and you are able to view that in one common easy-to-use user interface."

Mr. Jurczyk said that law firms can customize their SharePoint portals that will outperform any of the litigation support products that are available in the market today. He said that although he is disappointed about how little the litigation support vendors have done with developing SharePoint applications, he is optimistic about SharePoint's future. "Look at what EDD has done to us," Jurczyk said. "And it's just the beginning of what I think the explosion is. So, let's take a strategic view into the future and try and understand what these new needs are and use a new tool to do it with. I think we have the opportunity here for somebody innovative."

Julie Wade is a Certified Electronic Discovery Specialist at Harrison, Bettis, Staff, McFarland and Weems in Houston, Texas.

U.S. Supreme Court Opinion:

Recoverable Paralegal Fees

By Jodye Kasher, CP, San Antonio



(Paralegal Fees – U.S. Supreme Court decision) – *Richlin Security Service Co. v. Chertoff*, 128 S Ct 2007 (2008)

This case arises out of services performed under a contract between Richlin Security Service Co. (“Richlin”) and the Department of Transportation, wherein Richlin agreed to provide guard services for detainees at the Los Angeles International Airport. The Department of Labor decided that Richlin’s employees were due back wages resulting from an error in the wage classification scheme of the Service Contract. Richlin then filed a claim against the government for those back wages and associated taxes alleging that the original contract should have been higher to account for those increased wages and associated costs.

After Richlin prevailed on that issue, Richlin then submitted an application for reimbursement of attorney’s fees, expenses, and costs to the Board pursuant to the Equal Access to Justice Act (EAJA) to include over \$65,000 in attorney fees, and

approximately \$52,000 in paralegal fees. Gilbert J. Ginsburg, who began representing Richlin in 1994, used paralegals between 1994 and May 23, 2003 over the course of litigation of this case. During those nine (9) years, the paralegal billing rates had increased from \$50.00 per hour, to \$90.00 per hour, and ultimately \$135.00 per hour. Richlin was awarded approximately \$50,000 in attorney fees by the Department of Transportation Board of Contract Appeals, but only \$10,587 of the approximately \$52,000 submitted in paralegal fees, stating that under the EAJA, paralegal fees could only be reimbursed at the cost to the firm, not at market rates. The Board found \$35.00 an hour as a reasonable cost for paralegal fees, stating they used the internet to determine paralegal salaries in the Washington, D.C. area.

When Richlin appealed to the U.S. Court of Appeals for the Federal Circuit, the Court of Appeals affirmed, holding that paralegal costs should be regarded as “other expenses,” not attorney’s fees, and the other expenses were recoverable only at cost under the EAJA, as the EAJA’s lim-

ited waiver of sovereign immunity requires the statute be narrowly construed.

Richlin then filed a petition for certiorari, which the Court granted on November 13, 2007. Richlin alleged that the Federal Circuit’s decision conflicted with the Court’s decision in *Missouri v. Jenkins*, 491 U.S. 274 (1989), and further that the Court’s decision was in conflict with the decision of four other circuits. Petitioner, Richlin, argued, among other things, that paralegal services are a compensable part of “attorney fees.”

An amicus curiae brief was filed on behalf of National Association of Legal Assistants (“NALA”), the Paralyzed Veterans of America, and National Organization of Social Security Claims Representatives in support of Petitioner, Richlin. NALA advised they had also participated in the *Missouri v. Jenkins* decision and provided information on the utilization of paralegals throughout the United States. NALA argued that “compensating paralegal time at prevailing market rates will encourage the cost-effective delivery of legal services.”

On June 2, 2008, the Supreme Court of the United States reversed. The opinion by Justice Alito, joined in full by six other justices, and in part by Justices Scalia and Thomas, held, “...a prevailing party can recover paralegal fees from the federal government at prevailing market rates.”

Jodye Kasher is a Certified Paralegal through NALA, and a Board Certified Paralegal through the Texas Board of Legal Specialization in Personal Injury Law. She has 19 years of experience as a litigation paralegal, and has worked in a variety of areas. Ms. Kasher has been a past paralegal seminar speaker for the Division, as well as the Institute of Paralegal Education. She currently works in the Litigation Department of the international firm of Fulbright & Jaworski L.L.P.’s San Antonio office. She is a member of AAPA, STOP, the Bexar County Women’s Bar Association, and the Paralegal Division, currently serving as the Professional Development Chair for the Division.

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Exceptional Pro Bono Award Recipient Connie Nims

By Stephanie Hawkes, RP, CIPP

"If you don't provide pro bono services, I ask you, why not, why not?" This was the question that 2008 Exceptional Pro Bono Award Recipient Connie Nims asked the audience when she was presented with the Pro Bono award. Not offering yourself and your time or skills to someone less fortunate is something that Connie cannot comprehend. Volunteering for public service has been in Connie's life since the 1980s. When her legal career began in 2003, Connie also began volunteering with Legal Aid of Northwest Texas. For the past five years, she has continued to volunteer with Legal Aid, while also volunteering her time to another not-for-profit, social services group and working as a paralegal for Dallas County.

In 2007, Connie volunteered to help District 2 establish a pro bono program, so that its members would know about opportunities in Dallas and Ellis Counties. In this position, Connie contacted every legal aid group in Dallas, offering the group's paralegal services and asking how paralegals could best be used by each organization. Connie then put the word out, sending emails and talking to people, letting them know of the opportunities available. She scheduled work sessions at legal aid clinics and helped members find organizations that fit their interests, skills and time availability. At the same time, Connie served as a mentor to those in District 2 who wanted to get more involved in pro bono services. She answered questions, helped find information and offered encouragement to members, as they sought the perfect placement, not only in Dallas or Ellis County but in the surrounding counties. Because of Connie's



Patricia Guiliano (left) and Connie Nims

**Not offering
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efforts, many paralegals have been provided information about how to get involved in pro bono opportunities and as a result have volunteered their time and skills to those who are less fortunate.

The Division is lucky to have Connie as a member and honored to present her with the Exceptional Pro Bono Award. She displays the criteria of exceptional pro bono service, every day, both in her professional and personal life. Connie has shown us that we all can be a part of pro bono services. If you aren't doing pro bono work now, why not?

Stephanie Hawkes, RP, CIPP is the manager of Consumer Privacy Information Security at Nissan Motor Acceptance Corporation in Irving, Texas

Paralegal Division 2008 Annual Meeting

*by Susan Wilen, San Antonio
and Sheila Veach, CP, Lubbock*

The Annual Meeting of the State Bar of Texas was held at the George R. Brown Convention Center in Houston Texas on June 26-27, 2008. Over 60 hours of Continuing Legal Education (CLE) were provided for the diverse populations of 1,615 attendees, including attorneys, paralegals, and students, from all parts of the State of Texas.

The Paralegal Division of the State Bar of Texas provided four hours of CLE at the Annual Meeting on Friday, June 27, 2008. The first presentation, "What Lawyers and Paralegals Need to Know About Complying with the Texas Disciplinary Rules" was given by Judge Tracy Christopher of the 295th District Court in Houston. Her remarks focused on the ethical considerations for professional boundaries of paralegals to prevent and avoid the illegal practice of law. She emphasized the importance of attorney signatures on pleadings, not paralegals', and the perception of inappropriate solicitation of clients. In the courtroom, she reinforced the need for decorum of paralegals in dress and deed, but also recognized their substantial contributions as extra eyes and ears for the attorneys during a proceeding.

Next, Brant J. Stogner, an attorney at Hays, McConn, Rice & Pickering, P.C., addressed "What to Look for in Medical Summaries; Paid or Incurred Medical Expenses: Why They Matter." He provided a legal overview of the changes in HB 4 (Tort Reform) which subsequently changed the recovery of medical or health care expenses as "limited to the amount actually paid or incurred" by the plaintiff. The importance of this change in the law to paralegals is how it relates to how medical records are analyzed and how future depositions of written questions are structured.

Lastly, Warren Cole, an attorney in Houston, and Tom Vick, an attorney from

Weatherford, addressed the need and opportunities for "Pro Bono Opportunities." A brief video featuring Harriet O'Neill, Justice of the Texas Supreme Court, was shown indicating that Legal Aid in Texas helps 100,000 clients per year. This, unfortunately, reflects only 20% of the actual need in the state. Mr. Vick discussed the recent events in Eldorado, Texas regarding the pro bono representation of the children seized from the Fundamental Church of Jesus Christ Latter Day Saints (FLDS) by Child Protective Services of the State of Texas. He described the pro bono effort by attorneys in the state as the largest single pro bono effort ever accomplished in the State of Texas. With pro bono service being a major focus of the Paralegal Division, this presentation gave substance to the efforts being made throughout the state to provide legal services to those who cannot afford them.

Paralegals who attended these presentations gained new insights that were applicable to how they function on a daily basis and provided a window to opportunities for substantive professional contributions in the future.

The 2008 Annual Meeting and Luncheon of the Paralegal Division of the State Bar of Texas was also held on Friday, June 27, 2008, at the Brown Convention Center in Houston Texas, as a part of the State Bar of Texas Annual Meeting.

As attendees arrived at the Convention Center and entered the Paralegal Division's Annual Meeting and Luncheon, they were greeted by vendors with their tables of information and goodies, which included everything from cookies and candy to cups, notepads, and pens, business cards and brochures, among lots of other items.

As attendees made their way to their seats, each attendee was greeted by fellow members of the Paralegal Division from

Houston and the surrounding area, many of whom they had met or knew from previous meetings.

The Paralegal Division meeting began with a "State of the Division" address by Patricia (Patti) Giuliano, 2007-2008 President of the Paralegal Division. Patti reminded us of the various events of the past year, including the trip to Ireland. The incoming 2008-2009 President Rhonda Brashears, CP, and President Elect Stephanie Hawkes, RP, CIPP, were introduced to the attendees. Outgoing 2007-2008 Parliamentarian Robert Soliz read the Rules of Order.

Patti presented the Recipient of the 2008 Exceptional Pro Bono Service of the Year Award to Constance (Connie) Nims of Dallas, Texas, for her 30+ hours of pro bono on behalf of the legal community. In her address to the audience, Connie stated that she could not imagine being part of this profession and not giving back to those in need.

The outgoing Directors from the odd-numbered districts were introduced and presented with plaques for their service to the Division by out-going President Giuliano. Those directors were: Deirdre Trotter, CLAS, District 6 Director, Robert W. Soliz, District 8 Director, and Mona Hart Tucker, CP, District 14 Director. The incoming Directors from the even-numbered districts were introduced and installed. In addition, it was announced that the recipient of the 2007-2008 Award of Excellence Recipient was Ellen Lockwood, ACP, RP. Ellen received this award, not only for her service as a Chair of the Paralegal Ethics Handbook Committee but also her numerous other contributions to the Division. The Outstanding Committee Chair awards were presented to Carolyn B. Goff, Chair of the Ambassador Ad Hoc Committee, and Jodye Kasher, CP, Chair of the Public Relations Committee.



Jennifer Barnes, Richard "Racehorse" Haynes, Vanetta Murphree (Barnes and Murphree were the 2008 Annual Meeting Co-chairs)

Each of these outstanding ladies have made significant contributions to the Division and the paralegal community as a whole. Roy Wilson accepted an award on behalf of Copy Solutions which was presented in special recognition on behalf of Copy Solutions as appreciation of for their support of the Division and for a Paralegal Division Sustaining Member who provided providing the public relations materials for the Paralegal Division during 2007–2008. Lastly, incoming President Rhonda Brashears presented Patricia Giuliano with a plaque for her service as the Paralegal Division's President, President Elect, and District 5 Director.

Brashears then presented her vision for the upcoming year and announced that the next annual trip to Europe will be to Greece on April 25–May 2, 2009. As president, Rhonda's goals include working to enhance membership benefits through additional continuing legal education and pro bono service opportunities, working to reach additional paralegals throughout the state and grow Division membership, and to with work the State Bar of Texas and Texas attorneys to broaden the aware-

ness of the benefits of using a paralegal in the legal practice.

Rusty Hardin, who was scheduled to give the key note luncheon presentation, was unable to depart Washington, DC due to a problem with the airline, but the Annual Meeting Co-Chairs, Jennifer Barnes and Vanetta Murphree contacted Richard "Racehorse" Haynes. Mr. Haynes graciously accepted their invitation step in as the keynote luncheon speaker. He inspired us as paralegals and entertained us with stories of his experiences with the law and in the courtroom. He told stories from incidents with judges and other attorneys, interesting cases, and made us laugh with references to past cases from his personal experiences.

He reminded us of the importance of our jobs and encouraged and inspired us to work hard to help our attorneys to do their jobs and to do them well.

The Paralegal Division expresses its sincere thanks to all of its 2007–2008 volunteers.

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*Top: Robert Soliz, Patti Giuliano, Deirdre Trotter, Mona Hart-Tucker
(Past President and outgoing 2007–2008 Directors)*

*Left: Richard "Racehorse" Haynes
2008 Annual Meeting Keynote Speaker*





Warren Cole, Speaker, and Patti Giuliano, Past President



Mel Glin and Nan Gibson



Speaker, Brant Stogner



Annual Meeting Attendees



Charie Tuner and Anne Woods



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Patti Giuliano and Carolyn Goff, Committee Chair of the Year



Deirdre Trotter and Norma Hackler



Patti Giuliano and Roy Wilson of Copy Solutions (special award presentation)



Attendees gather to greet speaker



Patti Giuliano, Past President, and Rhonda Brashears, President



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be incurred by the Division, and a profile of the individual will be published in the *Texas Paralegal Journal*.

Please complete the following nomination form, and return it **NO LATER THAN MARCH 31, 2009** to the following:

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Firm: _____ Job Title: _____

Address: _____

Phone: _____ Fax: _____ Yrs. in Practice: _____

Work Experience: _____

Give a statement (on a separate sheet using "Nominee" rather than the individual's name) using the following guidelines as to how the above-named individual qualifies as rendering Exceptional Pro Bono Service by a Paralegal Division Member.

1. Renders service without expectation of compensation.
2. Renders service that simplifies the legal process for (or increases the availability) and quality of, legal services to those in need of such services but who are without the means to afford such service.
3. Renders to charitable or public interest organizations with respect to matters or projects designed predominantly to address the needs of poor or elderly person(s).
4. Renders legislative, administrative, political or systems advocacy services on behalf of those in need of such services but who do not have the means to afford such service.
5. Assist an attorney in his/her representation of indigents in criminal and civil matters.

2008–2009 BOARD OF DIRECTORS



2008–2009 Board of Directors, Paralegal Division. Seated from left to right: Clara Buckland, Stephanie Hawkes, Rhonda Brashears, Cheryl Bryan, Debbie Oaks Guerra. Standing from left to right: Charie Turner, Sheila Veach, Susan Wilen, Cynthia Williamson, Michele Rayburn, Michele Flowers Brooks, Connie Nims, and Kim Hennessy

President Rhonda Brashears, CP



Rhonda is a paralegal with the firm of Underwood, Wilson, Berry, Stein & Johnson, P.C. in Amarillo and has been in the legal profession for 22 years. She

practices in personal injury and civil trial defense law. She received her B.G.S. degree from West Texas A&M University in 1998, her CLA designation in 1996, and was board certified by the Texas Board of Legal Specialization in Personal Injury Trial Law in 1998.

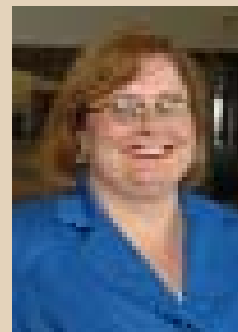
Rhonda has been a member of the Paralegal Division since 1990, and served

as Secretary from 1999 to 2001, President of the Division in 2002, and President-Elect in 2007. She has also served on various committees throughout the years. Rhonda is also a member of the Texas Panhandle Association of Paralegals, where she has served as President, President-Elect, Treasurer and NALA Liaison.

Rhonda is a part-time instructor at Amarillo College, teaching paralegal classes in its Paralegal Studies program and serves as the Chair of the Advisory Committee for Amarillo College's Paralegal Studies program.

Rhonda has been married to her husband Rod for 15 years and they have two children, Cody and Caitlyn, and one grandchild, Lilly. Rhonda is also a member of the First Baptist Church of Amarillo where she works with the Acteens.

President-Elect Stephanie Hawkes, RP, CIPP



Stephanie is the Manager of Privacy and Information Security at Nissan Motor Acceptance Corporation, a position in which she reports to General Counsel.

Stephanie is a graduate of the University of Texas at Austin and the Lawyers Assistant Program at Southwest Texas State University. In 1999, she obtained her Registered Paralegal certification from the National Federation of Paralegal Associations. In 2008, Stephanie obtained her Certified Information Privacy Professional

designation from the International Association of Privacy Professionals.

Throughout her career, Stephanie has been active in professional development of paralegals. She has served in various positions on several planning committees for the Texas Advanced Paralegal Seminar and Co-Chaired the Annual Meeting Committee in 2005. She previously served on the Board of the Dallas Area Paralegal Association. In 2000, she was awarded the "Volunteer of the Year" award and in 2001 was designated "Paralegal of the Year" by DAPA. Stephanie is a Past President of the Metroplex Association of Corporate Paralegals and most recently was the District 2 Director and Treasurer of the Paralegal Division.

Away from the office, Stephanie is a mentor in the Communities in School of North Texas program.

Parliamentarian Debbie Oaks Guerra

With nearly 20 years of real estate paralegal experience, 13 of those spent with the Trammell Crow Company, Debbie Guerra is currently the Legal Compliance Manager and Corporate Secretary of Dmyterko & Wright, LLC, a commercial real estate developer headquartered in Chicago, IL.



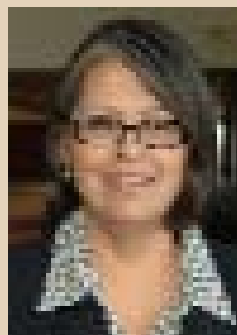
Debbie is currently serving her second term as District 12 Director. In 1996, she simultaneously served as the President of the Dallas Area Paralegal Association (DAPA) and District 2 Director on the PD Board of Directors. From 2004-2007, she served as the Executive Director of DAPA and has most recently served as the NFPA Primary Representative on the DAPA Board of Directors. She was named DAPA Paralegal of the Year in 2005, DAPA Volunteer of the Year in 2005 and was honored with the DAPA President's Award in 2007. She is the current PD Vendor

Liaison as well as the Vendor Chair on the 2008 Texas Advanced Paralegal Seminar (TAPS) Planning Committee.

Debbie serves on the Educational Advisory Boards of both Southeastern Career Institute (ABA approved paralegal program) and Everest College-Dallas and is a member in good standing of DAPA, the Denton County Paralegal Association (DCPA) and the North Texas Legal Association (NTLA) in Grayson County.

Debbie and her husband Freddie live in Flower Mound with their two amazing sons, Spencer, 11 and Reed, 10.

Secretary Clara Buckland, CP



Clara is serving her second term as District 16 Director.

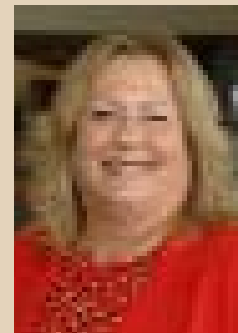
Clara is a Certified Paralegal with the El Paso law firm of Kemp Smith LLP. She has worked in the

firm's specialty area of Labor and Employment Law for nearly 14 years. Her supervising attorney and mentor is Michael D. McQueen, Managing Partner.

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

Clara enjoys many interests, including reading and research on the Tudor court of England. Clara has an identical twin, Claudia. Clara is married to Bucky (Mark) and they have two wonderful daughters, Jazmine and Olivia. In addition, they have been blessed with three beautiful grandchildren, almost-four-year-old Jason, Maddie who is two years old and Jayden, who was born July 16, 2008.

Treasurer Cheryl A. Bryan, CP



Cheryl is a paralegal with the law firm of Orgain Bell & Tucker, LLP in Beaumont.

Cheryl attended Northern Illinois University in DeKalb, Illinois for two

years. She has been employed with OB&T for 26 years. She began working as a paralegal in the late 1980s. In 1992, she passed the CLA exam sponsored by NALA. In 1997, she passed the board certification exam in personal injury trial law sponsored by the Texas Board of Legal Specialization.

Cheryl has been a member of the Paralegal Division since 1993. Actively pursuing CLE through the seminars sponsored annually by the Division, in 1998 or 1999, she met Nancy McLaughlin at a PD seminar when their bosses had a case together and Nancy took Cheryl under her wing. Nancy was a great supporter of the profession and the Division, and it was after her untimely death that Cheryl considered becoming more active in the Division, beginning by volunteering at TAPS.

Cheryl is also active in her local association, the Southeast Texas Association of Paralegals. Over the last several years, she has served on several event planning committees, and has been elected to serve as SETAP's NALA Liaison for 2008-2009.

Cheryl has been married to her husband, George, for almost 16 years. They have no children but do have two wonderful Labs, Jake and Samantha, and three saltwater aquariums.

Scruples

The Ethics of Owning Stock in a Client of the Firm *And Related Issues*

By Ellen Lockwood, ACP, RP



Conflicts and insider trading issues seem to get more complicated every day. In addition to the usual conflicts issues and avoiding trading on confidential and privileged information a paralegal may be exposed to, more and more firms are instituting policies and procedures that take these concerns to a higher level.

Do you or your immediate family own stock? If so, you may want to be sure none of the companies in which you or your family own stock are clients of the firm for which you work. Paralegals should also check your firm's policies regarding ownership of stock in companies the firm represents. Many firms have implemented such policies to try to limit the potential for conflicts and insider trading.

The potential for conflicts and insider

trading allegations may also be raised when any employee of a firm has a family member who works for a client of the firm, regardless of which section of the firm the employee works. For example, a paralegal works in the immigration section of a law firm and her husband works for the XYZ Corporation, a client of the firm. The firm doesn't do any immigration work for XYZ Corporation, only tax work. Although the paralegal does not work in the tax section of the firm, the paralegal may learn information about the work the firm is doing for XYZ Corporation. The paralegal may also get information from her husband about XYZ Corporation's business that, combined with information from her job, may constitute a conflict. While all law firm employees should be well aware that any information to which

they are exposed through their work should be considered confidential and privileged, some employees may consider discussions with their spouses either the exception to the rule, or necessary to ensure their spouses' position or advantage with the spouses' employer.

Because of this potential problem, paralegals should be careful not to discuss their work with firm employees other than those directly involved in the project. Paralegals should also take care not to discuss confidential or client proprietary information where it may be overheard by anyone, including other firm employees.

It is important to note that not everyone associated with a particular client is necessarily entitled to the same information. Paralegals should ask their supervising attorneys for a list of the people associated with the client with whom information may be shared. If someone other than one of the previously identified people contacts the paralegal for information, the paralegal should confirm with the supervising attorney what information may be provided to the requester. Providing information to the wrong person may not only violate the attorney-client privilege, but could provide a basis for an opportunity for insider trading.

With so many people hoping to gain any advantage, and clients ever more sensitive to the implications of misappropriated information and even the appearance of impropriety, paralegals must be ever vigilant to protect and preserve confidential, proprietary, and privileged information.



Ellen Lockwood, ACP, RP, is the Chair of the Professional Ethics Committee of the Paralegal Division and a past President of the Division.

She is a frequent speaker on paralegal ethics and intellectual property and the lead author of the Division's Paralegal Ethics Handbook published by West Legalworks. She may be contacted at ethics@txpd.org.

Do You Need a Financial Planner?

By Craig Hackler, Financial Advisor, Raymond James Financial Services

No matter how much money you make, it pays to keep on top of money coming in and going out. Even if you do a good job of that, there are important times in your life when talking with a professional adviser makes sense.

Almost every major life event - finding or losing a job, getting married or divorced, having a baby, buying a home—is likely to have a major impact on your finances. A new job may mean you are making more money—no problem there as long as you know the best way to invest it. Getting married may mean you have a second income to count on, but now you have someone counting on yours as well. Buying a house means you have to come up with a hefty sum of cash for a down payment, get used to monthly mortgage payments and meet the expense of house repairs.

Let's look at what happens if a baby comes into your financial picture. First, medical bills need to be paid, so having good medical insurance is important. Few insurance plans cover everything, so you'll need to have a cash reserve to cover deductibles and extras, not to mention the furniture, clothing and sundries you'll need when the newborn comes home.

With a new addition to the family, you'll want to make sure that the entire family (baby, too) is protected if something should happen to you—that means reviewing life and disability insurance to be sure it's adequate for your new responsibilities.

There's the future to start thinking about, too. Will your child go to college? If so, the College Board estimates that secondary education costs are rising 7% to 8% annually, a rate much higher than the rate of inflation. To afford the average \$7,000 total costs for a state university, you need to start saving \$195 a month. Wait until your child is 7 years old and the



monthly amount jumps to \$240! So, it's smart to put away a little sum each month.

What can you do to accommodate new strains on your paycheck? How can you meet all of your new responsibilities? With an important financial goal (such as educating a child) you'll want to work with a generalist—a financial planner. A lot of professionals specialize in areas such as taxes or stocks, but a financial planner helps you understand the “big picture.” A qualified financial planner can help you sort through your current financial situation, help you set short- and long-term goals and objectives, then present a “blueprint” designed to show you how you can meet your goals while staying within your means.

There's nothing more certain than change. And just as you learn to adapt to the changes life throws your way, you can count on things changing with your finances as well.

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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The award-winning Renaissance Dallas Hotel is centrally located in Market Center, near the city's top attractions in the West End. Special NALA rates are \$159/night for single, double, triple or quad. Call 800-468-3571 or 214-631-2222 and reference this meeting to ensure your special rate.

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