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Texas Paralegal Journal



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PRESIDENT'S *Message*

by Debra Oaks Guerra

I work for a firm that invests in energy. The United States Department of Energy is investing billions of dollars in alternative energy solutions. It's all around us. Depleting natural resources is the buzz word everywhere you turn these days. People have great concern about our dependence on foreign oil, the diminishing rain forests, the fear of the wildlife extinction, and so much more.

While we fight these causes, we may be ignoring a much greater concern – the dormant natural resources within each of us. Every person has been created with the ability and talents to create a phenomenal life of abundance. We all have the ability to thrive. Have you tapped into your natural resources to build the life you were created to live or are they wasting away, unused?

Do you realize the unique talents you have been given to help those less fortunate, to guide your profession or to be filled with joy and contentment? Are you using your inner gifts? Do you



even know what they are?

DISCOVER YOUR NATURAL RESOURCES

What are your goals?

What is the vision you have for your life – not just a vague dream or idea – a concrete, exciting vision of what you would love to accomplish? I challenge each

of you to dig deep within and begin to unearth the passion that may lie buried underneath insecurity, unbelief or busyness.

What do you love to do?

What gets you excited and energized? What sorts of projects or conversations do you enjoy taking part in? If you could have a day doing anything that brings you joy, what would you be doing? These are clues of your personal design for success.

What do you want others to remember you for?

When you tap into the legacy you want to leave, you are getting to the heart of what you were created to do. No person was created to live for themselves

and only gather wealth for their own desires. You were created to make a difference. How do you want to make a difference in the world, your community, your profession? True joy comes from focusing on helping others and improving their lives. Start building YOUR legacy today!

Realize Sustainability

Sustainability is the capacity to endure. It is the potential for long term maintenance of well being. When you tap into your natural resources and begin to live the life you were designed to live, your life takes on a whole new meaning and vibrancy. Don't miss it. Don't waste it. Begin creating the life you love by mining and sustaining your own natural resources today. After all, as the Paralegal Division turns 30 and celebrates its "pearl" anniversary - what better way to acknowledge that milestone than by discovering the *treasures* buried deep within?

It is my great privilege to serve as your 2010–2011 President. I commit to work closely with the Board of Directors to represent all the members of this great organization. As always, there is much work to be done, yet I look forward with great anticipation to our journey of discovery and sustainability as together, we harvest and further the natural resources within the Paralegal Division.

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Has your attorney given a CLE presentation lately?**

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If you've been to a great seminar lately, or your attorney recently prepared a paper for a seminar, please ask the attorney/author if he would be willing to submit the paper for publication in the TPJ. It truly is as simple as that!

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If you have any questions about submitting an article, please contact
Editor Heidi Beginski at hbeginski@kempsmith.com.

PARALEGAL ETHICS HANDBOOK 2009 EDITION

BY ELLEN LOCKWOOD, LAURIE L. BORSKI, RHONDA J. BRASHEARS,
DEBRA CROSBY, JAVAN JOHNSON, LISA SPRINKLE, AND OTHER MEMBERS
OF THE PARALEGAL DIVISION OF THE STATE BAR OF TEXAS

This handbook is an essential resource for experienced paralegals, those new to the profession, and attorneys working with them.

The product focuses on providing paralegals with the information, guidelines and tools necessary to assure they are always performing in an ethical manner. Paralegals must always take care to be sure they are not crossing any ethical lines. Ethical guidelines for paralegals and attorneys, vary from state to state, however, the professional paralegal needs to be familiar with them.

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Answers to a myriad of ethics questions can be found in this handbook including:

- Defining ethics and ethical obligations
- Remaining ethical
- Ethical considerations for a variety of functional areas including corporations, freelance, and as administrative, governmental, regulatory law paralegals, and alternative dispute resolution
- State Information
- Includes paralegal association ethics canons and related information

In addition, this handbook covers ethical considerations in practice areas including:

- Banking
- Finance, and Investment
- Bankruptcy
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TTPJ

Texas Paralegal Journal

Focus on...

I Saw It On Facebook, Now How Do I Use It At Trial?

For some reason, many users of both social networking sites and messaging services do so without any, or very little, discretion about what they post. This unguarded approach to use of these services has begun to provide litigators with powerful weapons in the courtroom.

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EDITOR'S *Note*

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

Email, instant message, text message, Twitter, Tweet ... new lexicons in our language and our lives. Have you searched the internet or a social networking site for information on an opposing party, witness or expert? Today, click on an icon and you may learn more than you hoped about someone. Paralegals have already mastered the art of finding this information; Michael Sawicki's article in this issue gives us guidelines on the other half of the puzzle -- how it can become admissible.

Many days I feel as though either my computer is (or I am) off in the wild blue yonder (and not in a good way) and being about as productive as staring at the clouds. Turns out, that could actually be a new tool for law firms to store and retrieve data and utilize shared software located in a remote location that is owned or managed by a third-party and accessed through the internet. In this issue, Kelley O'Conan provides a great overview of cloud computing.

Family law is challenging enough, but representing military personnel and their family members during combat adds a whole new twist to the situation. Donald L. Williams's article provides an outline of the issues that must be resolved for these clients.

If you did not travel to Spain on the most recent Division trip, be sure to read the article recap in this issue, and check out the gorgeous photographs -- it's the next best thing to having gone there!

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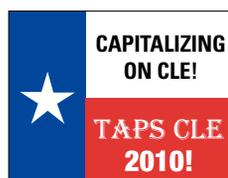
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"I Saw It on Facebook, Now How Do I Use It at Trial?"

By Michael Sawicki (with special assistance from Brandi Concienne)

Introduction

A large, light gray, stylized graphic element consisting of several overlapping, curved lines that resemble a hand or a stylized letter 'S', positioned on the left side of the page and partially overlapping the text.

The internet has revolutionized the way the world communicates. Information now moves in a variety of ways, is stored in many locations and can travel instantly across the globe amazingly, people are often incredibly frank when using this new technology, publishing intimate details of their lives for anyone who knows how to find it to see. Learning to find, collect and use this new information can arm litigators with powerful and economical tools. This information can be used to do a variety of trial-related tasks from instantly evaluating potential jurors to conducting potentially damaging discovery of an opponent or witness.

The Impact of New Information Technology

Recent news stories demonstrate that new communication and social networking technology is providing powerful evidence in today's courtrooms. For proof, consider the following:

- In Arkansas, a \$12 million jury verdict was almost overturned when it was learned one of the jurors had been posting details of the case on his Twitter account.
- In Detroit, Mayor Kwame Kilpatrick was convicted of perjury and was forced out of office when thousands of pages of text messages were discovered that proved he had an affair with another worker.
- In Rhode Island, a defendant in a DWI case received a stiffer sentence when prosecutors discovered photos of him drinking while wearing a prison costume on his Facebook page.
- In Milwaukee, a surgeon performed a knee surgery using Twitter to provide minute by minute descriptions of the procedure while it was actually taking place.

A few years ago, the use of social networking sites and instant messages were popular among relatively small number of people. Today, hundreds of millions regularly log into sites like Facebook and Myspace to share information, re-connect with old friends and look for employment. It is estimated that there are currently more than 500 social networking sites online ranging from those with broad appeal, like Facebook, to others that which much narrower and often unique focuses, like Ravelry (a site specializing on knitting and crocheting) and Vampirefreaks (a site devoted to people wishing to dress and live like vampires). The sites are typically easy to join, encourage interaction between their members and can be a wonderful source of information about potential witnesses, parties to cases and even jurors.

Along with the rise of social networks, the popularity of communicating using text messages, chat rooms and sites like Twitter has exploded. Most cell phone service includes text messaging capability and many web sites host services that can be used to conduct private chat sessions amongst individuals or groups. From AOL Instant Messenger to Yahoo! Messenger, there are now many methods available to send and receive information almost instantly.



For some reason, many users of both social networking sites and messaging services do so without any, or very little, discretion about what they post. This unguarded approach to use of these services has begun to provide litigators with powerful weapons in the courtroom. The most high-profile recent example would be the amazingly quick downfall of Detroit Mayor Kwame Kilpatrick.

Kwame Kilpatrick

Kilpatrick and an aide, Christine Beatty, gave depositions in a civil wrongful termination lawsuit brought by a city employee. The employee had alleged that Kilpatrick and Beatty had conspired against him to have him terminated. In the civil depositions, Kilpatrick denied any involvement in the decision to fire the employee and further repeatedly denied any affair with Beatty. Kilpatrick, who was married at the time, testified in the civil depositions that he had nothing but a professional relationship with Beatty and rarely saw her in person.

Then, the cat got out of the bag.

Attorneys got hold of more than 600 pages of text messages Kilpatrick made on a city phone. The records contained more than 14,000 text messages sent between Kilpatrick and Beatty during 2002 and 2003, when the issues involved in the wrongful termination suit were happening. Contrary to Kilpatrick and Beatty's testimony about their relationship, the text messages revealed in intimate detail that they were in fact having an affair.

Here are some of the messages.

Consider whether you would want to get similar evidence about a defendant if you could.

9/12/02, 10:30 p.m., During trip to Washington, D.C.

Christine Beatty: Can I just come and lay down in your room until you get back?

Kwame Kilpatrick: Yes.

9/28/09, 11:53 p.m.

CB: Where are you now?

KK: At home waiting for all EP [executive protection unit officers] to leave. Where are you?

CB: At the residence inn in Madison hqts.

KK: What room?

CB: ...I'm in room 311 in bldg 3 in the back.

10/8/02, 10:18 a.m.

KK: I'm fine. Need a break. I want to get out of town w/you. Check on resorts outside of Houston.

After the text messages were released, Wayne County Prosecutor Kym Worthy announced a 12-count criminal indictment against Kilpatrick and Beatty, charging Kilpatrick with eight felonies and Beatty with seven. The charges included perjury, misconduct in office and obstruction of justice. Kilpatrick ultimately pled guilty to two felony counts of obstruction of justice, agreed to serve a four month jail term, pay a \$1 million fine, surrender his law license, and resign his post.

Twitter Verdict

Consider this litigator's nightmare: you've just tried a difficult case and won a multi-million verdict jury verdict. But, days after the verdict, the other side moves to set it aside because of evidence that a juror was texting messages about the deliberations.

This is exactly what happened in an Arkansas court in March 2009. Attorneys for Stoam Holdings filed a motion requesting a new trial of a \$12 million jury verdict after they found that a juror sent eight messages about the case on his Twitter account via his cell phone. One message, sent before the jury announced its verdict, read: "Ooh and nobody buy Stoam. Its bad mojo and they'll probably cease to Exist, now that their wallet is 12m lighter." Another read: "I just gave away

TWELVE MILLION DOLLARS of somebody else's money." Stoam's attorneys argued that these and other messages sent during the trial demonstrated that the juror was not impartial and conducted outside research about the issues involved in the case.

The Court ultimately held that the juror's actions did not violate any rules and denied the motion for new trial. The judge held that there was no evidence the juror, Jonathan Powell, did any outside research about the case and that his Twitter messages did not demonstrate evidence of his being partial to either side. The judge noted that some of the messages were sent before Powell was selected as a juror and that the attorneys for the defense had not bothered to question him about bias during jury selection. In statements to the media, Powell said he just wanted to be a good juror and was looking forward to his involvement in the process. He said he did not use his cell phone or lap top during the trial, although he brought them to court each day and warned, "The courts are just going to have to catch up with the technology."

Facebook DWI

A 20-year old Rhode Island man had been charged with driving drunk and causing a crash that seriously injured another driver. Before his sentencing, prosecutors checked Joshua Lipton's Facebook page as part of their routine investigation. They found that two weeks after he'd been charged with causing the wreck, Lipton attended a Halloween party dressed as a "jail bird." There were several photos of him posing with his tongue sticking out in a black-and-white striped shirt and an orange, prison-style jumpsuit with the words "JAILBIRD" printed on the chest.

The prosecutors offered the photos into evidence during the sentencing and argued that Lipton was an "unrepentant partier" who "lived it up" while the



female victim of the crash laid in a hospital bed. The judge agreed, calling Lipton “depraved” and handed down a 2-year prison sentence.

Social Networking Sites

Social networking sites have proliferated across the globe, with millions of users and more springing up every day. They typically focus on building online communities of people who share similar interests or are interested in learning more about specific topics. Most provide users ways to trade messages, send pictures and videos and share information over the internet through email and instant messaging services. Typically, joining the sites is free and can instantly link a user with access to information on millions of people. Many users customize their sites with detailed personal information, including birthdates, work histories, voting preferences, political and social affiliations.

This unlimited access has concerned some of these sites’ operators and users worried about who can see their information. Recently, some sites have taken steps to reduce access and beef up user’s controls over who can see their information. But the same search tools created to help link users with long-lost friends and others with similar interests can be used by anyone seeking to get more information. The number of social networking sites seems to be expanding each day. There are sites for almost any type of interest including sites for job searches, religious organizations, and many “special” interests.

Privacy and security

Twitter collects personally identifiable information about its users and shares it with third parties. Twitter considers that information an asset, and reserves the right to sell it if the company changes hands.

Twitter had some problems with security as hackers have accessed the site



to send fake messages from someone else’s account. This led Twitter to offer users an optional PIN number to secure their posts. In January 2009, more than 30 high-profile users’ Twitter accounts were compromised and fake messages – including sexually explicit and drug-related posts – were sent. This triggered Twitter to re-examine password security in an attempt to avoid future attacks.

HOW TO USE AND ACCESS SOCIAL NETWORK INFORMATION

Gaining Access

Accessing most of the social networking sites is fairly simple. First, much of the information contained on the site can be picked up in a Google or Yahoo search. Simply type in a person’s name and then see what turns up in the search engine response. Second, since access to most social networking sites is free, create your own account and use the site’s internal search features to look for people of interest. Some sites allow you to search by things like a person’s high school or university or other group affiliations. By entering the name of the school into the search engine, you will find anyone who has listed it on their profile pages. From there, you can access the person’s profile if the user has made it public. But even if the user has not made it public, you can still learn about a person by seeing what is connected to the user. For example, on Facebook, a search result on a user with a private profile will still reveal who that person has made “friends” with. From there, you can often find information that may reveal more information about

the target’s history or affiliations. Also on Facebook, a person can be “tagged” on a photograph uploaded by another user. This feature allows people to put names to faces on photographs and will show up in a search request. Facebook and MySpace both allow users to remove the “tag” on photographs to maintain their privacy, but this requires an affirmative step to be taken.

Most sites have now created privacy shields that allows access to users’ information only to people they allow inside. But, once you are a “friend” most sites allow complete access to the information in another “friend’s” profile. Facebook has recently started allowing users to further limit what information their “friends” have access to and the general trend of other sites is to impose similar access limitations.

Jury Selection

Because information on social networks can be so personal and so revealing, it has become a tool for litigators preparing for jury selection. Many jury consultants use the sites to mine for information on potential jurors before voir dire begins. Start by getting the juror’s name and entering it into search engines. If they have public personal profiles, you can obtain a very personal and unmitigated look into the person’s beliefs, likes and dislikes. This type of search is quickly replacing money spent on private investigators to look into the background of potential jurors. For the time and nominal expense of an internet search, you can often obtain just as much information as a more expensive private investigator might find.

Discovery – How to get the information

Most service providers seem to be aware of the potential value of information on their sites and have erected barriers to make it difficult for people to get it. They frequently cite the Electronic Communications Privacy Act; 18 U.S. C.



Section 2701 which prevents an electronic communications service provider from producing the contents of a electronic communication even if subpoenaed. Providers also typically have terms of service policies that govern how long they maintain electronic communications. These terms can usually be found on the site itself. For example, America Online's policy is to maintain emails sent over their system for a period of only "approximately two days after the email has been read." After that, the email and all records of it are deleted. It's policy also states that it does not retain the contents of chat room or instant message communications nor does it store information about any member's internet usage.

MySpace's terms claim that will not respond to civil or criminal subpoenas, unless the request comes from a law enforcement agency.

Most phone services claim that they do not maintain records of instant messages sent over their lines but frequently can provide records showing the time and receiver of them. For example, Sprint will provide a "call detail record" that will show the time the instant message was sent and what number it was sent to. This information has only been kept since November 2007.

Use at Trial – The Law in Texas

While there has been an explosive growth of information available on the internet, the law has not kept pace with the developments. The Federal Rules were recently amended to address discovery of electronically stored information (ESI). In general, the new Federal rules, for the first time, explicitly made mention of ESI and began to set out a framework for how to deal with it. The rules set out methods requiring parties to deal with e-discovery issues early in the case and provide a procedural mechanism through which parties can produce and protect electronic data.

Under the new rules, ESI includes (but is not limited to) e-mail, web pages, word

processing files, computer databases, and almost anything that can be stored on a computer. The commentators indicate that the rules were intended to be read broadly to apply the ESI definition to many forms including traditional e-mail, text messaging, instant messaging, personal web mail, voicemail, Blackberry devices, 'blogs,' and other emerging technologies. Litigants in federal courts are now faced with an obligation to preserve potentially relevant information contained within any of these sources.

The Texas rules and case law have not kept pace with the Federal developments. In fact, the Texas Rules of Civil Procedure make very little effort to differentiate electronic discovery from any other form of discovery. Only Rule 196.4 of the Texas Rules of Civil Procedure addresses the production of electronic or magnetic data. It states:

To obtain discovery of data or information that exists in electronic or magnetic form, the requesting party must specifically request production of electronic or magnetic data and specify the form in which the requesting party wants it produced. The responding party must produce the electronic or magnetic data that is responsive to the request and is reasonably available to the responding party in its ordinary course of business. If the responding party cannot—through reasonable efforts—retrieve the data or information requested or produce it in the form requested, the responding party must state an objection complying with these rules. If the court orders the responding party to comply with the request, the court must also order that the requesting party pay the reasonable expenses of any extraordinary steps required to retrieve and produce the information.

Comment Number 3 to the Rule states:

A party requesting production of magnetic or electronic data must specifically request the data, specify the form in which it wants the data produced, and specify any extraordinary steps for retrieval and translation. Unless ordered otherwise, the responding party need only produce the data reasonably available in the ordinary course of business in reasonably usable form.

There have been several cases dealing with the use of evidence obtained from social networking sites. However, the decisions do not provide much direction on the steps necessary to discover or make the information admissible, instead focusing on other issues. Here are some of the cases:

In *In Re Rodney Reed*, (an unpublished 2009 case at 2009 WL 97260) the Texas Court of Criminal Appeals dealt with a case where pages from a defendant's MySpace page were offered as evidence. The defendant filed an appeal of a capital murder conviction claiming that the investigating officer had a history of violence. He sought to introduce MySpace pages containing sexually explicit and violent images that he claimed were created by the officer. The Court did not allow introduction of the evidence because the defendant could not sufficiently demonstrate that they were in fact created by the officer. The defendant produced evidence showing the pages were created by an individual named "pointman-1" who was listed as a "34-year old, 5'11," straight white male, SWAT operator in Texas. The court concluded that, even though the descriptive information was similar to the officer, there was not enough to prove he created the page and did not allow the evidence.

Munoz v. State, 2009 WL 695462 (Tex. App. - Corpus Christi 2009) dealt with introduction of MySpace pages for a



defendant in a aggravated assault case. The pages showed the defendant flashing gang-related signs and associating with other known gang members. The prosecution offered the pages to prove the defendant was in a gang at the time of the assault. The court allowed the pages in over the testimony of a police gang unit officer who testified that he had reviewed the pages, identified the defendant in them and was familiar with signs used by gangs.

In *Williford v. State*, 127 S.W.3d 309 (Tex. App.-Eastland 2004) the court upheld the use of “Encase®”, a software program that allowed tracking of a user’s internet and computer use history.

Other cases

Courts in other states have also started looking at issues concerning the use of web sites and other materials. Some of those cases are:

Email Authentication

U.S. v. Sidiqi (11th Cir. 2000) 235 F.3d 1318.

E-mails introduced into evidence over defendant hearsay and improper authentication objections.

Court analyzed the authentication issues under traditional evidentiary standards. (FRE 901(a) and 901(B)(4).) Contains good discussion of circumstantial evidence of authenticity but no discussion as to the technical aspects of e-mail. As to hearsay objection, the e-mails were considered admissions of a party. (FRE 801(d)(2)(A).)

On-line Evidence Admissibility

United States v. Brand 2005 WL 77055 (S.D.N.Y. January 12, 2005).

Chat transcript of AOL instant messages admissible since it was sufficiently similar to the charged conduct.

Hammontree v. State (Ga. Ct. App. 2007) --- S.E.2d ---, 2007 WL 547763

Where the victim testified that she was an ‘actual participant’ in the IM conversa-

tion and confirmed its contents, the IM ‘transcript’ was properly authenticated.

U.S. v. Burt (7th Cir., July 26, 2007) 495 F.3d 733

Logs of a Yahoo! chat were admissible when properly authenticated.

Lorraine v. Markel American Insurance Company (D.Md. May 4, 2007) 241 F.R.D. 534.

Case provides a comprehensive analysis of how to authenticate digital evidence such as digital

photos, email and text messages.

People v. Hawkins (June 2002) 98 Cal. App.4th 1428. Court addresses California Evidence Code section 1552 [printed representation of computer information or a computer program is presumed to be accurate]. Court noted “the true test for admissibility of a printout reflecting a computer’s internal operations is not whether the printout was made in the regular course of business, but whether the computer was operating properly at the time of the printout.”

Authentication of screen name

People v. Von Gunten (2002 Cal.App.3d Dist.) 2002 WL 501612. [Unpublished.]

Defendant laid an inadequate foundation of authenticity to admit, in prosecution for assault with a deadly weapon, hard copy of e-mail messages (Instant Messages) between one of his friends and the victim’s companion, as there was no direct proof connecting victim’s companion to the screen name on the e-mail messages.

Introduction of Web Sites

EEOC v. E.I. duPont de Nemours & Co., 2004 WL 2347559, 65 Fed. R. Evid. Serv. 706.

Printout from Census Bureau web site containing domain address from which image was printed and date on which it was printed was admissible in evidence. *Telewizja Polska USA, Inc., v. EchoStar Satellite Corp.* (N.D. Ill. 2004) 2004 WL 2367740 [Not Reported] Archived ver-

sions of web site content, stored and available at a third party web site, were admissible into evidence under Federal Rule of Evidence 901. The contents of the web site could also be considered an admission of a party opponent, and thus are not barred by the hearsay rule. With little case law guidance, the approach to using evidence obtained from social networking sites is best based on the basics. Consider how to authenticate the materials, i.e. having the witness or subject prove up the evidence before trial through interrogatories, admissions or deposition testimony. Next, review the evidence to look for potential hearsay objections. Finally, consider working out a discovery plan with opposing counsel to allow the parties to stipulate to the admissibility of the evidence early on in the litigation.

Ethical Issues related to Social Networking sites

With any new litigation tool comes the challenge of using it ethically. The lure of using the Internet’s anonymity to collect information about witnesses, opponents, jurors and adverse lawyers can become a trap.

Because the technology is so new, few states have directly addressed lawyer’s use of social networking sites. This includes how they advertise as well as how the sites are used during litigation. The few states that have weighed in on the topic have relied on basic ethical principles to reign in misuse of the electronically available information. While Texas has yet to adopt any specific rule or issue an ethics opinion on the subject, the direction provided by other states should help identify a path to avoid ethical breaches.

One subject that has been raised is the use of subterfuge to gain access to a witness or opposing party’s social networking sites. In some cases, lawyers have created false personas to solicit a “friend” request to a target. In others, lawyers have used investigators or other third parties to



“friend” the target and solicit information and evidence to be used against them. Pennsylvania’s state bar ethical committee issued an advisory opinion in March 2009 addressing the appropriateness of using a third party to “friend” a subject involved in litigation. The committee looked at the appropriateness of asking someone unrelated to the lawyer’s staff to request access to the target’s social networking pages and then correspond with the target in an attempt to solicit damaging evidence. The Pennsylvania committee questioned whether this technique was a form of “deception in investigation” or whether it was similar to efforts to surreptitiously videotape a subject while they went about in public. The committee held such actions would not be condoned. The committee concluded that the lawyer would be held responsible for the actions of a third party used to gain access to a social networking site under Pa. R. Prof. Cond. 5.3 (note: Pennsylvania’s ethical rules are patterned off the ABA Model Rules). In other words, just getting someone else unrelated to the lawyer did not insulate him/her from their actions. The Committee further noted that the conduct would violate other rules that prohibited making a false statement of material fact to a witness.

It is worth noting that the Texas Rules of Professional Conduct contain language similar to that cited by the Pennsylvania committees. Rule 4.01 states:

Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid making the lawyer a party to a

criminal act or knowingly assisting a fraudulent act perpetrated by a client.

The Comment to the rule notes:
2. A lawyer violates paragraph (a) of this Rule either by making a false statement of law or material fact or by incorporating or affirming such a statement made by another person. Such statements will violate this Rule, however, only if the lawyer knows they are false and intends thereby to mislead.

Such conduct could also run afoul of Rule 8.04 regarding misconduct. It states:

- (a) A lawyer shall not:
 - (1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;
 - (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

This section would likely make the lawyer ultimately responsible for the actions of the third party. This section would also be invoked to remind the lawyer that they cannot use a third party to engage in conduct that the lawyer would be ethically prohibited from doing as well.

The rule I would suggest following is to first consider whether the actions would be considered appropriate if done in a context outside of a social networking site. For example, would it be appropriate to misrepresent your identity to a witness in an effort to collect evidence? If the disciplinary rules prohibit the conduct, chances are it is also going to be prohibited if the only difference is that a

social networking site is used to get the information.

Other considerations include using social networking sites to advertise a lawyer or a law firm. In most cases, the pages on a social networking site will have to meet the ethical requirements generally applicable to any lawyer advertising. Again, there are no rules directly yet on point, but with the increasing number of lawyers using Facebook to tout their services an opinion is all but inevitable.

Finally, be careful what you or your clients post on any social networking site. The safest way to approach posting any information is to determine whether it is potentially damaging. If it is, presume that the information is going to get out one way or another. Many lawyers now require their clients to remove or deactivate any social networking site they have during the pendency of the litigation. As unrealistic as this request may be, it may not solve the problem as information from the pages can linger because of connections to other user’s pages.

It isn’t only clients that have to worry about what they post on their pages. Galveston-area Judge Susan Criss reported a story about one lawyer who got into trouble in her court because of a status update on a Facebook page. The lawyer had requested, and received, a continuance of a matter before Judge Criss claiming that her father had died. But the lawyer, who had previously “friended” the Judge, went on to post a string of Facebook updates detailing her week of partying and drinking with friends while she was allegedly in mourning. Needless to say, the lawyer had some explaining to do at her next court appearance. Judge Criss has also discussed seeing lawyers who have bragged about how much they were going to win in an ongoing case or complaining about the actions of opposing counsel in most colorful terms.

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Health-Care Reform: How Does It Affect You?

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Now that comprehensive health-care reform has been signed into law, how will it affect you? While some portions of the law become effective in 2010, other provisions are phased in over time. Nevertheless, it is almost certain that at least some of these reforms will have an effect on you and your family.

If you already have health insurance

First, by 2014, most U.S. citizens and legal residents will be required to have qualifying health insurance or face a possible fine. But even if you already have insurance, some reform provisions may affect you. For instance, beginning this year, you generally can keep your adult child on your coverage up to age 26. And, your insurer will no longer be able to rescind your coverage if you get sick, impose lifetime coverage limits, rescind your coverage except for fraud, or impose coverage exclusions for your child due to pre-existing health conditions. In 2014, you can no longer be charged higher rates based on your health status or gender, and insurers cannot extend waiting periods beyond 90 days.

Starting next year, reimbursements from health flexible spending accounts (health FSAs) and health reimbursement accounts (HRAs) for over-the-counter drugs will be restricted, and tax-free reimbursements from health savings accounts (HSAs) and Archer MSAs for over-the-counter drugs will not be allowed, while the tax on HSAs and Archer MSAs increases for distributions not used for qualified medical expenses. In addition, beginning in 2013, contributions to health FSAs will be limited to \$2,500 per year. Finally, the income threshold for itemizing medical expense deductions will increase from 7.5% to 10% in 2013.

Medicare Part D participants who find themselves paying all of the cost of their prescriptions after reaching a minimum threshold, a situation referred to as the "donut hole," will gradually see their out-of-pocket expenses decrease

If you have Medicare

Medicare beneficiaries will also see some changes to their coverage. You'll be covered for most preventive and wellness care expenses without co-payments beginning in 2011. Medicare Part D participants who find themselves paying all of the cost of their prescriptions after reaching a minimum threshold, a situation referred to as the "donut hole," will gradually see their out-of-pocket expenses decrease, beginning in 2010 with the payment of a \$250 rebate, until 2020, when the donut hole is completely filled. If you're a Medicare Advantage beneficiary, however, beginning in 2011, you may see some of the extra benefits offered by these plans dropped as government payments to these plans are restructured and, in some cases, reduced. And, in 2013, if you're an individual with annual earnings equal to or greater than \$200,000, or a married couple with joint annual earnings of \$250,000 or more, your Medicare payroll tax will increase by 0.9%, from 1.45% to 2.35%. Also, for high income taxpayers, a Medicare tax of 3.8% will be applied to some types of investment income, such as rent, capital gains, and annuity payments, but not distributions from qualified retirement plans, such as

IRAs and 401(k) accounts.

If you don't have insurance

If you don't have insurance, or if it's too expensive, the new reforms may make it easier for you to get and keep health insurance. By 2014, insurers will have to accept you regardless of your health history, and premiums can only vary based on tobacco use and age. Prior to that time, if you haven't been able to get insurance for at least six months due to a pre-existing condition, you will be able to purchase insurance through temporary high-risk pools.

In 2014, Medicaid availability is expanded to those under age 65 with incomes up to 133% of the Federal Poverty Level (FPL). You will also have state-based American Health Benefit Exchanges, available by 2014, through which you can buy health insurance from various plans. In addition, premium and cost-sharing subsidies will be available for individuals and families with incomes at or below 400% of the FPL, which can aid in reducing the cost of insurance purchased through exchanges.

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Up in the Clouds

By Kelley O'Conan

I am not the most technology literate paralegal around. Growing up in a time when watching black and white television was still a big deal, I have had to stretch during my professional life to grasp concepts such as spreadsheets and relational data bases, let alone e-filing and electronic document repositories. Recently I had to learn about cloud computing and my first thought was, "No, this is too much like science fiction!" But then I calmed down and did some research. Now I understand at least the basics. If your firm is considering a move to cloud computing or if a client has concerns over the legal issues involved, this primer may be helpful.

What is Cloud Computing?

Cloud computing refers to an arrangement where users store and retrieve data and utilize shared software located at a remote location that is owned or managed by a third-party and accessed through the internet. The arrangement allows companies to purchase the amount of storage and services they need using a pay-as-you-go approach. Think of the difference between renting an apartment and owning a house.

Benefits include lower costs (through metered payments, less capital investment, less maintenance), scalability (adding capacity and applications quickly and as needed), access from anywhere (controlled by a password), and centralized upgrades being the responsibility of the third-party. If you are renting an apartment, you pay less, can more readily upgrade to a larger one, take a job and move cross country, and call the apartment manager if the sink backs up.

Disadvantages include lack of standards, loss of control, and some tax issues (less to depreciate). If you move from one apartment to another, the drapes may not fit; you are limited as to how you can decorate the apartment; and you can-

not deduct the rent on your income tax return.

Parties in a cloud computing arrangement are the cloud provider, the cloud end-user service providers, and the end-user. A cloud provider maintains the platform and possibly infrastructure whereas a cloud end-user service provider offers software and data storage. Contracts are often non-negotiable click-wrap contracts where the end-user clicks "I Agree" to accept predetermined terms or they are standard templates with favorable provider terms and limited provider liability.

End-users can access the cloud by 1) IaaS [Infrastructure as a service] where the provider delivers networks, additional storage space or computing power, or 2) PaaS [Platform as a service] where the provider delivers a platform (for example, an operating system) so users can develop their own applications, or 3) SaaS [Software as a service] where providers deliver software applications (for example word processing).

There are different types of clouds available. The public cloud is the shared pay-as-you-go arrangement previously described. A private cloud is where cloud computing is emulated on a private network. For example, all the branch offices and headquarters share software owned by the company and the software is located in virtual space. A hybrid is a combination of public and private cloud computing.

Although the concept of cloud computing is not new, its recent growth and market share of business computing has mushroomed. Potential legal issues are now being considered and two primary areas of concern have surfaced: data and liability.

Legal Issues with Data

Data may be moving at any given time in the cloud. It can be stored on multiple servers and travel whole or in part

to other servers. These servers may exist across the street or across the world. Although the information is usually kept in highly secure data centers, nonetheless control of the data is given up and reliance on providers is increased.

Data Location

Generally, a forum clause in the contract will state the jurisdiction and what law rules; however, laws in some countries will trump contractual terms. Ascertain if data are subject to the laws of the jurisdiction where data are residing and/or where they are being processed and used. Determine if there are restrictions on cross-border transfers and whether the end-user has clients that dictate data should not be located in some countries. If there is a dispute and a complaint is filed based on in rem jurisdiction, where the data reside are key. Clarify how data residency will be determined if the data has been split into numerous locations.

Data Storage and Retrieval

The low cost of cloud storage is appealing and most courts accept electronic copies of records. Weigh this cost-effective storage option against the ability to retrieve the information quickly when it is needed for daily processes. It may significantly impact an end-user if payroll or marketing leads are not readily accessible. Depending on the provider, retrieval time may be consistently high or intermittently slow. Business continuity effects bottom lines, so verify if continual service will be available and what type of notice and arrangements are made for scheduled downtimes. Find out if the provider routinely backs-up stored data and establish how restoration service will be provided if data are lost or corrupted. Further, have a disaster recovery plan established and tested so data can be retrieved if the provider goes bankrupt or is in a location hit by natural disaster or political instability.

If the information needs to be moved electronically to a different application and/or a different provider (temporarily during a scheduled downtime or permanently due to a provider change),

make certain that formatting will not be a problem. Currently formats and protocols have not been standardized between cloud services. Determine how the provider will store the data and what format they will be stored in. Obtain assurance that retrieved data will be in the same format they were submitted in for storage.

Data Retention

Records retention is governed by complex rules and the end-user who is responsible for assuring compliance needs to make certain the provider can appropriately retain and destroy records. In addition to multiple sites, providers often split or condense related data and move them within the cloud to make efficient use of their own servers. Sometimes data is moved to a subcontractor for storage. With this data management, the provider must still be able to place a legal hold on a specific category of documents and metadata as directed by the end-user. During discovery, the provider must offer reasonable certainty that all requested records and possibly metadata have been provided. Also the end-user needs to reflect on how forensic computing will be performed since it is based on maintaining a pristine copy of the server prior to the legal record review. Can the provider sufficiently locate, isolate and extract all the required data from multiple locations without accidentally exposing other end-users' information? Will the provider certify this has been done or will they allow the forensic examiner access to do so?

Consider if the end-user will receive notice or even be aware if the provider has been served and ordered by a third-party to supply information stored on their servers. Potentially some or all of the end-user's data may be turned over. Evaluate the impact to the end-user when the provider is subject to a search warrant or seizure. If a provider is the target of an investigation, particularly in a different country, will that compromise the end-user's data?

Make sure an exit strategy has been developed, including rights and obligations of both provider and end-user. Consider whether the data will be in a

usable format and whether a specific operating system will be needed. Can the provider convert the data to a more transferable format? The provider must be able to return all of the data and certify it has been removed from their servers and their subcontractors' servers.

Data Security

A close cousin to data retention is data security. Traditionally, electronic records reside in an individual's hard drive, a company server, or a local provider's server. If there was more than one customer, the provider partitioned off sections of the server for each one. Hence, each customer's information was segregated from other customers' data. The provider would negotiate with end-users and comply with their unique security needs. Since high volume is a main feature of cloud computing, the provider does not necessarily take the time to partition a shared server. With many end-users' data moving and on more than one server in the cloud, unauthorized access, either accidentally or purposefully, is a concern. Potentially other end-users, the service provider and the cloud provider could accidentally access the end-user's data. Cyber-terrorists could hack data packages as they are transferred within the cloud.

Unfortunately, in cloud computing, end-users depend on the physical and logical security the provider has set up. Negotiated security standards are not commonplace, since profits for cloud providers are based on volume, not customization. However, providers cannot disclaim obligations to protect data. There a variety of laws that may apply to end-users' data and demand security and privacy of information: U.S. Patriot Act, HIPAA (health information), GLB (financial services), Fair Credit Reporting Act, Stored Communications Act (electronic communications, part of the ECPA), Privacy Act (for federal agencies), trade regulations (ITARS, EARS), Data Protection Directive in the EU, and more. As this article is being written, the Cyber Security Enhancement Act is being considered by Congress.

As a partial solution, the end-user

should demand privileged user entry where a password is required to access data. The end-user may also consider encrypting data before storing it with the provider. End-users may choose not to store highly sensitive material, such as trade secrets or attorney client privileged information, in the cloud.

Next, the provider needs to take initiative and offer assurance by establishing and maintaining high levels of security. The end-user should be aware of the standard of care utilized and the specific procedures used by the provider. The provider should be willing to undergo audits if requested. The American Institute of Certified Public Accountants Auditing Standards Board has issued guidelines for auditors under SAS 70 and providers can obtain SAS 70 certification.

Lastly, security audits use footprints to determine who has viewed or changed records. If the provider could supply footprints, the end-user may be able to set-up a process to recognize if data has been altered or is missing.

Patterns of Data

Providers have access to data patterns of not just one, but many end-users. These patterns could be used by the provider or sold by the provider to develop computer tools or marketing strategies by vendors. For example, if massive amounts of accounting information are typically retrieved in January, vendors may market software to sort and categorize financial information and introduce it to the market in the last quarter. End-users may want to specify that they own the pattern of their data.

Finally historical information on the data patterns and on services the provider supplies should be available to the end-user for analysis, benchmarking and auditing.

Conclusion

The law cannot keep up with the technology. This has been a non-exhaustive list of possible legal issues. Many more will surface as the technology is used and problems arise.

Due diligence should be performed

prior to entering into an agreement with a cloud provider. The provider should be financially stable and have a track record. Determine if the provider's servers are located in stable areas of the world and are physically secure. Check if there is an over-reliance on subcontractors, especially start-up or financially unstable ones. Find out what type of litigation has occurred, what is outstanding and if there are any ongoing third-party claims.

Arrange a trial with a cloud provider or choose a cloud service that is low-

impact on your firm to determine what issues may be important to you going forward. Do not place highly sensitive information in the cloud.

If entering into an agreement, have a negotiated contract if possible. If it is a boilerplate form, at a minimum make certain that key issues are addressed. Have an attorney review the agreement before signing or clicking the "I Accept" button.

Cloud computing could be the new paradigm in how information services are provided to the business community.

Become familiar with the concepts so that you can add to the discussion at your firm.

Kelly O'Conan is a certified paralegal who works in insurance and corporate law. She teaches paralegal studies part-time and is the Scholarship Chair for the Fort Worth Paralegal Association. She serves on the PD Professional Development Committee and holds membership in NALA and the Metroplex Association of Corporate Paralegals.

Texas Family Law in the Military Combat Zone

By Donald L. Williams

Representing military personnel and their family members in Family Law related matters in peacetime can be one of the most challenging legal undertakings presented to the Family Law Practitioner. Now add a war and combat to the equation and a totally different set of problems, situations and challenges emerges that is unparalleled in representing their civilian counterparts. The purpose of this paper is to provide practical tips and insights, and to demystify the issues and highlight the uniqueness of this field of practice. As a result, there can be a better understanding of the culture, needs and special requirements demanded by the military family's status especially when the servicemember is in a war zone. Ultimately, a better representation of the military client and the family can be had in the civil court system. It is not the intent of this paper to give definitive answers; however, it will raise definitive questions that must be resolved.

KNOW THE CULTURE OF YOUR CLIENT

When a potential military client makes an appointment to see you, insure that

the intake staff is instructed to get their rank. Not only is it a sign of respect to address military personnel by their rank, but it will also give you an insight as to the relevant complexity of your case and the client's ability to pay. It is disrespectful to call a commissioned officer "Mister." "Mister" is a title reserved for warrant officers; a subordinate rank to a commissioned officer. An eagle insignia in the army could be a "specialist" (E-4) or a "Colonel" (O6). Know and study the rank structure. You may call all male soldiers "Sir" and be within the bounds of protocol. You may address all female military personnel as "Ma'am" and dodge the bullet. Familiarity terms may be interjected as you get to know your client.

Note that military clients may not be able to wait a week for an appointment. Stress and short time-frames are part and parcel of their daily existence. If at all possible give them special consideration when scheduling appointments.

In the initial interview always include concepts and terms such as Home of Record, Deployment, Re-deployment, LES, Basic Entry Pay Date, PCS, DIEMS, Relocation, TDY, Rotation, BAH, BAS, Unit, Chain of Command, email address,

cell phone number.

The initial interview **MUST** be precise, concise, timely and highly informative for both of you. It may be your last face to face encounter.

JURISDICTION

Spend considerable time on jurisdictional matters. The state of Texas may have jurisdiction over your client and not the Respondent or the children. The court may have jurisdiction over the parties, but not the property. The court may have jurisdiction over both parties for divorce purposes, but not over the division of the military retirement.

SERVICE OF PROCESS

Service of process is another concern when the Respondent is stationed on a military reservation; when the Respondent is on a ship in the United States or overseas; or on a base or post or living on the economy overseas.

A common example is a Petitioner domiciled in Texas. The Respondent has never been to Texas; the Respondent is a resident of Washington State. The Respondent is in the process of PCSing to Germany; and, upon arrival at his unit in Germany he is being deployed to Iraq.

Where is effective service and how is it executed?

SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

If you can get him served, what rights does he have under the Servicemembers

Civil Relief Act? If children are involved, can he use those rights to defer the payment of child support? Can the family be left without adequate support, shelter, transportation and benefits because he invokes his rights and claims that his military duties will not allow him to address these matters in court at this time?

ARMY FAMILY SUPPORT REQUIREMENTS (AR 608-99)

In advising the military family member, do you tell him/her that the servicemember can shirk his financial responsibility to his family because there is no court order or agreement establishing his financial obligations? What, if any, duty or obligation does the military impose upon servicemembers, absent court intervention, to support their family members? The practitioner **MUST** become familiar with **AR 608-99** and be able to advise the family member of the chain of command and the other resources available when situations of this nature occur.

ESTABLISHMENT, COLLECTION AND ENFORCEMENT OF CHILD SUPPORT

To adequately address the needs of the military client, the practitioner must know what other agencies and entities are available to establish and collect child support for military families. How do these agencies partner with the federal government in insuring that military children are adequately supported financially?

What are the avenues available to mobilized reservists to adjust their child support obligations when their civilian income was \$90,000.00 per year and the income of a mobilized sergeant is considerably less? How soon can that be done? Will a court hearing have to be scheduled? Can it be done before he/she leaves?

To properly counsel or advise military clients concerning child support, one must have the requisite tools and knowledge concerning military rank, longevity, pay and allowances. One must know what is taxable and non-taxable income; the differences between **BAH** and **BAH II (RC/T)** (Basic Allowance for Housing); **BAS** (Basic Allowance for Subsistence). What significance is the distinction

between "Pay" and "Allowance"? Is income different when a servicemember is stationed in a "Combat Zone"? What is a combat zone and how can we determine what or where a combat zone is?

UNIQUE PARENT-CHILD ISSUES

Even though the weight of the information and cases appear to disfavor the uprooting of children, moving, deployments and relocation is part of the military culture and existence. What can military families expect in a divorce and custody when the parties are not originally from the area where they are stationed; and, for good reason the spouse with the children wants to move back to familiar and more supportive surroundings? Who pays for traveling expenses for visitation purposes? How should expenses be allocated? What if visitation is overseas?

What problems or issues are presented to military children that move from base to base, state to state and country to country? Is there any detriment to their development? What facilities are available to assist them? How good are the DOD schools? Do children of deployed servicemembers experience additional issues brought on by the deployment?

MILITARY RETIREMENT CALCULATION, DRAFTING, ACCEPTANCE, CLARIFICATION AND ENFORCEMENT

The clients may ask, what portion, if any, of the military retirement am I entitled? What is the "10 Year Rule?" What is "HIGH 3"?

Who pays for the **SBP** (Survivor's Benefit Plan)? If I remarry do I lose my military retirement benefit? What is the **20/20/20 Rule**? What is the **20/20/15 Rule**? How does the servicemember's **VA Waiver** affect my retirement award? What is **concurrent receipt**? What is the **Combat Related Special Compensation (CRSC)**? How do they affect my military retirement award? Why did **DFAS** (Defense Finance and Accounting Service) say that my divorce decree has to be clarified in order for me to get my award? What are the procedures for me to take in order for **DFAS** to accept my retirement application

and/or my **SBP** election?

FAMILY RELATED ASPECTS OF THE UCMJ

Your interview may include the aspects of criminal non-support and fraud, domestic abuse, adultery as a criminal offense and whether it is advantageous to raise the issue; how debt, bankruptcy and NSF checks can affect a career or security clearance; why separation agreements and military family care plans may have no effect in family courts.

TEXAS FAMILY CODE PROVISIONS §6.303 of the Texas Family Code is entitled "ABSENCE ON PUBLIC SERVICE". It provides as follows:

Time spent by a Texas domiciliary outside this state or outside the county of residence of the domiciliary while in the service of the armed forces or other service of the United States or of this state is considered residence in this state and in that county.

Periods of absence from the state for service in the military are not counted against you when counting time towards being a Texas resident and a resident of a particular county.

§ 6.304 of the Texas Family Code "ARMED FORCES PERSONNEL NOT PREVIOUSLY RESIDENTS" states:

A person not previously a resident of this state who is serving in the armed forces of the United States and has been stationed at one or more military installations in this state for at least the last six months and at a military installation in a county of this state for at least the last 90 days is considered to be a Texas domiciliary and a resident of that county for those periods for the purpose of filing suit for dissolution of a marriage.

Likewise, a person who was not previously a resident of this state but who serves in this state on military service may claim residence in the state for purpose of filing a divorce.

This section can be read to allow for a status divorce for a service member who may have previously been domiciled in a state other than Texas as long as he meets

these criteria. See *Fox v. Fox*, 559 S.W.2d 407 (Texas App. Austin 1977, no writ) decided under the predecessor statute Tex. Family Code Ann. Section 3.23 (1995). Please note that this statute does not confer jurisdiction over the SAPCR part of the lawsuit, nor does it allow a Texas Court to divide property located outside of this state.

REPEALED: Source SB 279.

Effective 9/1/09

§ 153.3161 of the Texas Family Code is entitled "POSSESSION DURING MILITARY DEPLOYMENT". It is a new provision that was added in 2005 and amended effective September 1, 2007. It is effective for SAPCRS pending on or after June 18, 2005 or September 1, 2007, respectively. The court must honor the wishes of a service member or soon to be service member (who is not a person with the exclusive right to designate the child's residence) who designates someone else to exercise possession of the child during periods of deployment outside the U.S. The court must still determine that the possession is in the child's best interest. The amendment expands the possession beyond one weekend per month and defines "military deployment" to mean duty of more than six (6) months at a location where access to the child is not reasonably possible and where the servicemember lacks the option to be accompanied by the child. During these times of possession, the person designated has the rights and duties of a non-parent and they are subject to any provisions of the order that restrict or prohibit access to the child by any other person. The designee's right to possession ends after the deployment is concluded and that person returns to their usual residence.

Please note that the pick up and return of the child contemplate surrender and return to the other parent's residence. Thus, an out of town designated person would have to come into town and get the child and return the child to the same place. The designee does not have to be a related person; however, should the deployed person select a designee that is unknown to the child, the court might

well find that such possession is not in the child's best interest. Remember that this provision allows a non-custodial parent to exercise rights and does not apply to a parent with the exclusive right to decide the child's residence. What happens in a JMC case in which neither parent has the right to decide the child's residence? Clearly the Code does not intend for the fact of deployment to allow a parent to designate a person to stand in for the "primary parent".

NEW FAMILY CODE PROVISIONS SPECIFICALLY AFFECTING THE DEPLOYED MILITARY SERVICEMEMBER EFFECTIVE 9/1/09

§153.3162 Additional Periods of Possession Or Access After Conclusion of Military Deployment. Source HB 409 Effective 9/1/09 ADDED

- (a) In this section, "conservator" means:
- (1) a possessory conservator of a child; or
 - (2) a joint managing conservator of a child without the exclusive right to designate the primary residence of the child.
- (b) Not later than the 90th day after the date a conservator who is a member of the armed services concludes the conservator's active military deployment, the conservator may petition the court to:
- (1) compute the periods of possession of or access to the child to which the conservator would have otherwise been entitled during the conservator's deployment; and
 - (2) award the conservator additional periods of possession of or access to the child to compensate for the periods described by Subdivision (1).
- (c) If a conservator petitions the court under Subsection (b), the court:
- (1) shall compute the periods of possession or access to the child described by Subsection (b)(1); and
 - (2) may award to the conservator additional periods of possession of or access to the child for a length

of time and under terms the court considers reasonable, if the court determines that:

- (a) the conservator was deployed in a location where access to the child was not reasonably possible; and
- (b) the award of additional periods of possession of or access to the child is in the best interest of the child.
- (d) In making the determination under Subsection (c)(2), the court:
 - (1) shall consider:
 - (a) the periods of possession of or access to the child to which the conservator would otherwise have been entitled during the conservator's deployment, as computed under Subsection (c)(1);
 - (b) whether the court provided in an order under Section 153.3161 that a person exercise limited possession of the child during the conservator's deployment; and
 - (c) any other factor the court considers appropriate; and
 - (2) is not required to award additional periods of possession of or access to the child that equals the possession or access to which the conservator would have been entitled during the conservator's deployment, as computed under Subsection (c)(1).
 - (e) After the conservator has exercised all additional periods of possession or access awarded under this section, the rights of all affected parties are governed by the terms of any court order applicable when the conservator is not deployed.

Source: HB 409

Eff. Date: 9/1/09-applies to SAPCR/Modification pending/filed on or after 9/1/09

Subchapter L. Military Duty-ADDED

§ 153.701. Definitions.
In this subchapter:

- (1) "Designated person" means the person ordered by the court to temporarily exercise a conservator's rights, duties, and periods of possession and access with regard to a child during the conservator's military deployment, military mobilization, or temporary military duty.
- (2) "Military deployment" means the temporary transfer of a service member of the armed forces of this state or the United States serving in an active-duty status to another location in support of combat or some other military operation.
- (3) "Military mobilization" means the call-up of a National Guard or Reserve service member of the armed forces of this state or the United States to extended active duty status. The term does not include National Guard or Reserve annual training.
- (4) "Temporary military duty" means the transfer of a service member of the armed forces of this state or the United States from one military base to a different location, usually another base, for a limited time for training or to assist in the performance of a non-combat mission.

§ 153.702. Temporary Orders.

- (a) If a conservator is ordered to military deployment, military mobilization, or temporary military duty that involves moving a substantial distance from the conservator's residence so as to materially affect the conservator's ability to exercise the conservator's rights and duties in relation to a child, either conservator may file for an order under this subchapter.
- (b) The court may render a temporary order in a proceeding under this subchapter regarding:
- (1) possession of or access to the child; or
 - (2) child support.
- (c) A temporary order rendered by the court under this subchapter may grant rights to and impose duties on a designated person regarding the child, except the court may not require the designated person to pay child support.

- (d) After a conservator's military deployment, military mobilization, or temporary military duty is concluded, and the conservator returns to the conservator's usual residence, the temporary orders under this section terminate and the rights of all affected parties are governed by the terms of any court order applicable when the conservator is not ordered to military deployment, military mobilization, or temporary military duty.

§ 153.703. Appointing Designated Person For Conservator With Exclusive Right To Designate Primary Residence Of Child.

- (a) If the conservator with the exclusive right to designate the primary residence of the child is ordered to military deployment, military mobilization, or temporary military duty, the court may render a temporary order to appoint a designated person to exercise the exclusive right to designate the primary residence of the child during the military deployment, military mobilization, or temporary military duty in the following order of preference:
- (1) the conservator who does not have the exclusive right to designate the primary residence of the child;
 - (2) if appointing the conservator described by Subdivision (1) is not in the child's best interest, a designated person chosen by the conservator with the exclusive right to designate the primary residence of the child; or
 - (3) if appointing the conservator described by Subdivision (1) or the person chosen under Subdivision (2) is not in the child's best interest, another person chosen by the court.
- (b) A designated person named in a temporary order rendered under this section has the rights and duties of a nonparent appointed as sole managing conservator under Section 153.371.
- (c) The court may limit or expand the rights of a nonparent named as a designated person in a temporary order rendered under this section as appropriate to the best interest of the child.

§ 153.704. Appointing Designated Person To Exercise Visitation For Conservator With Exclusive Right To Designate Primary Residence Of Child In Certain Circumstances.

- (a) If the court appoints the conservator without the exclusive right to designate the primary residence of the child under Section 153.703(a)(1), the court may award visitation with the child to a designated person chosen by the conservator with the exclusive right to designate the primary residence of the child.
- (b) The periods of visitation shall be the same as the visitation to which the conservator without the exclusive right to designate the primary residence of the child was entitled under the court order in effect immediately before the date the temporary order is rendered.
- (c) The temporary order for visitation must provide that:
- (1) the designated person under this section has the right to possession of the child for the periods and in the manner in which the conservator without the exclusive right to designate the primary residence of the child is entitled under the court order in effect immediately before the date the temporary order is rendered;
 - (2) the child's other conservator and the designated person under this section are subject to the requirements of Section 153.316, with the designated person considered for purposes of that section to be the possessory conservator;
 - (3) the designated person under this section has the rights and duties of a nonparent possessory conservator under Section 153.376(a) during the period that the person has possession of the child; and
 - (4) the designated person under this section is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.
- (d) The court may limit or expand the

rights of a nonparent designated person named in a temporary order rendered under this section as appropriate to the best interest of the child.

§ 153.705. Appointing Designated Person To Exercise Visitation For Conservator Without Exclusive Right To Designate Primary Residence Of Child.

- (a) If the conservator without the exclusive right to designate the primary residence of the child is ordered to military deployment, military mobilization, or temporary military duty, the court may award visitation with the child to a designated person chosen by the conservator, if the visitation is in the best interest of the child.
- (b) The temporary order for visitation must provide that:
 - (1) the designated person under this section has the right to possession of the child for the periods and in the manner in which the conservator described by Subsection (a) would be entitled if not ordered to military deployment, military mobilization, or temporary military duty;
 - (2) the child's other conservator and the designated person under this section are subject to the requirements of Section 153.316, with the designated person considered for purposes of that section to be the possessory conservator;
 - (3) the designated person under this section has the rights and duties of a nonparent possessory conservator under Section 153.376(a) during the period that the designated person has possession of the child; and
 - (4) the designated person under this section is subject to any provision in a court order restricting or prohibiting access to the child by any specified individual.
- (c) The court may limit or expand the rights of a nonparent designated person named in a temporary order rendered under this section as appropriate to the best interest of the child.

§ 153.706. Temporary Order For Child Support.

A temporary order rendered under this subchapter may result in a change of circumstances sufficient to justify a temporary order modifying the child support obligations of a party.

§ 153.707. Expedited Hearing.

- (a) On a motion by the conservator who has been ordered to military deployment, military mobilization, or temporary military duty, the court shall, for good cause shown, hold an expedited hearing if the court finds that the conservator's military duties have a material effect on the conservator's ability to appear in person at a regularly scheduled hearing.
- (b) A hearing under this section shall, if possible, take precedence over other suits affecting the parent-child relationship not involving a conservator who has been ordered to military deployment, military mobilization, or temporary military duty.
- (c) On a motion by any party, the court shall, after reasonable advance notice and for good cause shown, allow a party to present testimony and evidence by electronic means, including by teleconference or through the Internet.

§ 153.708. Enforcement.

Temporary orders rendered under this subchapter may be enforced by or against the designated person to the same extent that an order would be enforceable against the conservator who has been ordered to military deployment, military mobilization, or temporary military duty.

§ 153.709. Additional Periods Of Possession Or Access.

- (a) Not later than the 90th day after the date a conservator without the exclusive right to designate the primary residence of the child who is a member of the armed services concludes the conservator's military deployment, military mobilization, or temporary military duty, the conservator may petition the court to:
 - (1) compute the periods of possession of or access to the child to which the conservator would have otherwise been entitled during the conservator's deployment; and
 - (2) award the conservator additional periods of possession of or access to the child to compensate for the periods described by Subdivision (1).
- (b) If the conservator described by Subsection (a) petitions the court under Subsection (a), the court:
 - (1) shall compute the periods of possession or access to the child described by Subsection (a)(1); and
 - (2) may award to the conservator additional periods of possession of or access to the child for a length of time and under terms the court considers reasonable, if the court determines that:
 - (a) the conservator was on military deployment, military mobilization, or temporary military duty in a location where access to the child was not reasonably possible; and
 - (b) the award of additional periods of possession of or access to the child is in the best interest of the child.
- (c) In making the determination under Subsection (b)(2), the court:
 - (1) shall consider:
 - (a) the periods of possession of or access to the child to which the conservator would otherwise have been entitled during the conservator's military deployment, military mobilization, or temporary military duty, as computed under Subsection (b)(1);
 - (b) whether the court named a designated person under Section 153.705 to exercise limited possession of the child during the conservator's deployment; and
 - (c) any other factor the court considers appropriate; and
 - (2) is not required to award additional periods of possession of or access to the child that equals the possession or access to which the conservator would have been entitled

during the conservator's military deployment, military mobilization, or temporary military duty, as computed under Subsection (b)(1).

(d) After the conservator described by Subsection (a) has exercised all additional periods of possession or access awarded under this section, the rights of all affected parties are governed by the terms of the court order applicable when the conservator is not ordered to military deployment, military mobilization, or temporary military duty.

Source: SB 279

Eff. Date: 9/1/09-applies only to SAPCR pending on or filed on or after 9/1/09

§ 156.006(b). Temporary Orders-AMENDED

(b) While a suit for modification is pending, the court may not render a temporary order that has the effect of changing the designation of the person who has the exclusive right to designate the primary residence of the child under the final order unless the temporary order is in the best interest of the child and:

- (1) the order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development;
- (2) the person designated in the final order has voluntarily relinquished the primary care and possession of the child for more than six months [~~and the temporary order is in the best interest of the child~~]; or
- (3) the child is 12 years of age or older and has expressed to [~~filed with~~] the court in chambers as provided by Section 153.009 [~~in writing~~] the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child [~~and the temporary order designating that person is in the best interest of the child~~].

Source: HB 1151

Eff. Date: 9/1/09-applies only to SAPCR pending on or filed on or after 9/1/09

§ 156.006(c). Temporary Orders-ADDED

(c) Subsection (b)(2) does not apply to a conservator who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701.

Source: SB 279

Eff. Date: 9/1/09-applies only to SAPCR pending on or filed on or after 9/1/09

§ 156.101. Grounds For Modification Of Order Establishing Conservatorship Or Possession And Access. AMENDED/ADDED

(a) The court may modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child if modification would be in the best interest of the child and:

- (1) the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since the earlier of:
 - (a) the date of the rendition of the order; or
 - (b) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based;

- (2) the child is at least 12 years of age and has expressed to [~~filed with~~] the court in chambers as provided by Section 153.009 [~~in writing~~]; the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child; or
- (3) the conservator who has the exclusive right to designate the primary

residence of the child has voluntarily relinquished the primary care and possession of the child to another person for at least six months.

(b) Subsection (a)(3) does not apply to a conservator who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701.

Source: HB 1012 & SB 279

Eff. Date: 9/1/09-applies only to suits for modification on or filed on or after 9/1/09

§ 156.102(d). Modification Of Exclusive Right To Determine Primary Residence Of Child Within One Year Of Order -ADDED

(d) Subsection (b)(3) does not apply to a person who has the exclusive right to designate the primary residence of the child and who has temporarily relinquished the primary care and possession of the child to another person during the conservator's military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701.

Source: SB 279 & HB 1012

Eff. Date: 9/1/09-applies only to SAPCR pending on or filed on or after 9/1/09

§156.105 "MODIFICATION OF ORDER BASED ON MILITARY DEPLOYMENT"

is also a new provision that applies to suits pending or filed after June 18, 2005 and the amended provisions apply to cases pending or filed after June 15, 2007. It provides that deployment, in and of itself, is a material and substantial change of circumstance sufficient for a modifying order regarding possession or access to a child. If the court finds that modification is in the best interest of the child, the court may modify to provide for the possession found in Section

153.3161(REPEALED). May the court order more than just those mentioned in §153.3161(REPEALED)? Why does this provision discuss access when the related section does not? Most likely, this is just a section that addresses the burden of proof in such cases by stating that the deployment alone will meet the first prong of the modification burden with the deploying parent still having the burden of proving best interest. This provision contains the same definition of "military deployment" as stated above.

§ 156.105. Modification Of Order Based On Military Duty [DEPLOYMENT]-AMENDED

~~(a) In this section, "military deployment" means military duty ordered for a period of more than six months during which the person ordered to duty: (1) is not provided the option of being accompanied by the person's child; and~~

~~(2) is serving in a location where access to the person's child is not reasonably possible.~~

~~(b) The military duty of a conservator who is ordered to military deployment, military mobilization, or temporary military duty, as those terms are defined by Section 153.701, does not by itself constitute [of a person who is a possessory conservator or a joint managing conservator without the exclusive right to designate the primary residence of the child is] a material and substantial change of circumstances sufficient to justify a modification of an existing court order or portion of a decree that sets the terms and conditions for the possession of or access to a child except that the court may render a temporary order under Subchapter L, Chapter 153.~~

~~(c) If the court determines that modification is in the best interest of the child, the court may modify the order or decree to provide in a manner consistent with Section 153.3161 for possession of the child during the period of the militar~~

~~Source: SB 279~~

~~Eff. Date: 9/1/09-applies only to~~

SAPCR pending on or filed on or after 9/1/09

Subchapter E – Modification Of Child Support

§ 156.410. Change In Circumstances Resulting From Military Service - REPEALED

~~Source: HB 1012~~

~~Eff. Date: 9/1/09~~

§156.410 "CHANGE IN CIRCUMSTANCES RESULTING FROM MILITARY SERVICE" REPEALED

was enacted in 2003 and amended in 2005. It ties into Section 156.401 regarding grounds for modifying child support. It provides that the call up into active military service is a material and substantial change in circumstances provided that the active service is for at least 30 consecutive days and it results in a decrease of the net resources of the obligor during the service. Such a modification motion has unique procedural requirements to include that the obligor's commanding officer must provide an affidavit that states the start and end date of the service and the anticipated monthly gross income from the service. Return from service is a material and substantial change should the obligee later file a motion to modify if the court previously modified the support order. Clearly, this contemplates an almost automatic reduction and later increase of support should the military service result in a downward change of income for the obligor. Please note that it only applies one way- to a decrease in net resources. This does not mean that a modification to increase support is not warranted, only that the regular modification provisions of Section 156.401 would apply to such a case.

CHAPTER 161 – TERMINATION OF THE PARENT-CHILD RELATIONSHIP § 161.001. Involuntary Termination Of Parent-Child Relationship - AMENDED

The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence: (T) been convicted of;

(i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;

(ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i); or

(iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i);

~~Source: SB 1838~~

~~Eff. Date: 9/1/09-applies only to SAPCR filed on or after 9/1/09~~

KNOW YOUR RESOURCES

The military has a plethora of individuals, entities and agencies that are available to assist the servicemembers and their families in crises. Often many situations can be resolved without resorting to the judicial system. It is imperative that the Family Law Practitioner have available the resources to which he can refer the military client. The resources include but are not limited to the following:

1. The servicemember's Chain of Command.
2. The Post Legal Assistance Office (SJA)
3. Claims (SJA)
4. Trial Defense Service
5. The Unit Chaplain
6. The Inspector General
7. AER (Army Emergency Relief)
8. Family Advocacy

9. Finance
10. Housing
11. Transportation
12. TRICARE
13. Red Cross
14. Mental Health
15. CID/MPs
16. Armed Forces YMCA
17. ACS (Army Community Services)
18. Veterans Administration
 - Off Post
 1. State Attorney General
 2. Child Protective Services
 3. County Attorney
 4. District Attorney
 5. Military Related Websites

FAMILY CARE PLAN

Much information is available on the web for service members and their families to assist them in all aspects of military life. Websites with useful information for military families about such things as planning for deployment, personal finance, relocation, counseling and the like include the following: www.military.com/spouse/fs/ and www.militarychild.org.

One topic that is frequently mentioned in the discussions of deployment and deployment readiness is the Family Care Plan.

It is suggested that service members have developed family care plans whether or not they expect to be deployed. These plans are intended to address time periods for drills, annual training, mobilization and deployment. A site at military.com/benefits has useful suggestions in this

regard. See www.military.com/benefits/resources/family-support/family-care. While the military encourages the preparation of a family care plan, there can be some confusion about the non-binding nature of such plans in litigation. The military's requirement that a service member complete a family care plan is in no way determinative of what a family court will do in any given case. Sometimes the service member and his/her family need to be educated about this and they may act under the false assumption that if a matter is addressed in the military's family care plan that is sufficient for the court and the court should just accept the plan. This plan may indeed control until such a time as a court is able to rule. Clearly, the plan serves an important function for shorter absences by the service member. But it cannot deprive a court that has jurisdiction over the children from entering appropriate court orders.

Another resource to the service member and family is the FAMILY READINESS GROUP or FRG. This is an officially command-sponsored organization of family members, volunteers, soldiers and civilian employees that belong to a unit. It is designed to assist the unit commander, the soldier and the family members. Each group is designed to promote soldier readiness, and at the same time strengthen families.

CONCLUSION

Each practitioner serving the military client in family law related matters should

do so with professionalism, courtesy, efficiency, specialized knowledge, empathy and patience. The effective interview and counseling of military clients include obtaining pertinent and unique facts, giving accurate, authoritative information, knowing the law and applicable regulations; articulating in a balanced manner the positive and negative aspects of the issues and, if necessary, referring the case to someone else capable of handling such matters.

Handouts can save time; answer the frequently asked questions; educate you and the client; cover the bases; reduce mistakes, grievances and misunderstandings.

Additionally, it is recommended that practitioners use email and other forms of electronic communication for updates to clients and for follow ups. Using and knowing about authorized websites as information tools accomplishes the same positive results as stated previously.

Finally, as evidenced by the number of new provisions of family law directed specifically to the military who are in harms way, the Texas legislature is keenly aware that the current state of family law was unmindful of the culture, nuances and unique situations that exist to the service-members and their families as a result of serving in a Combat Zone.

Donald L. Williams is an attorney-mediator & counselor at law and Visiting Associate Judge of the 171st Judicial District Court in El Paso

HURRY!! GET THOSE MEMBERSHIP RENEWALS IN THE MAIL

The second (2nd) notice of the 2010–2011 Membership Renewal for the Paralegal Division (PD) was mailed to all members whose membership dues were not paid as of June 1, 2010. The deadline to receive membership dues is August 31, 2010 (must be postmarked as of this date). Any membership renewal form that is not received (or postmarked) by August 31 will be returned to you and a new application will be required to be completed in order to continue your membership in the Paralegal Division of the State Bar of Texas.

And while you are thinking of the Paralegal Division, please Edit My Profile by accessing the Members-Only area/Directory of the PD Website at www.txpd.org to include the areas of law in which you work!!!

Scruples

The Ethics of Technology

Ellen Lockwood, ACP, RP

Paralegals should stay current on technology.

There are the standard online research services of Westlaw and Lexis/Nexis, which you have probably used for years, but these companies are constantly updating and expanding not only their information, but the ways it can be searched and the costs for research. A good paralegal knows the best and most efficient ways to find information, and the cost comparison of each method, or at least knows how to get this information quickly when required. Keeping up with the best ways to find information on the World Wide Web is also a constant challenge. Many legal periodicals now devote at least a small space in each issue to listings of helpful web sites.

New software is constantly being released, including updated versions of programs you already use, such as word processing programs, spreadsheets, schedulers, database programs, and litigation management programs. To be able to evaluate whether these programs and upgrades are useful, you must use them and/or find out about their features. Many software vendors offer online demonstrations and there are often articles on software in legal periodicals.

Keep up with Internet search techniques. The best websites and search methods are constantly changing. It is our responsibility to do things as efficiently and cost-effectively as possible, without sacrificing quality.



Calendaring/Docketing

While electronic docketing and calendaring systems are wonderful tools and do a great job of counting dates and in some cases, applying rules to calculate future deadlines, the information is only as accurate

as the original data entered into them. Regardless of who is responsible for calendaring or docketing deadlines, someone should at least spot-check that the deadlines were entered correctly. Everyone can make an error and it is better to catch it early than to miss a deadline.

Cell Phones and Cameras

Cell phones are a wonderful convenience but conversations are easily overheard. Paralegals should be aware of who may be able to overhear a conversation. It's a good idea to use a code phrase or shorthand if you must convey confidential information in a public place. Additionally, most cell phones now include cameras. Others may easily take photos or videos of documents as well as attorneys, witnesses, and other information.

Social Networks

Paralegals should work with their attorneys to remind clients and witnesses that anything posted on social networks may be viewed by opposing parties and opposing counsel. Recently, a man was sued for libel for a Twitter posting regarding a moldy apartment. The safest thing to do is to keep social networking sites private.

Of course, paralegals should not post anything to a social networking site that is confidential.

Correspondence such as cease and desist letters and the like may be posted by opposing parties to their websites or social networking sites. That possibility should be taken into account when deciding how to communicate with an opposing party and when drafting correspondence.

Voice Mail

Although voice mail is another wonderful convenience, it is not without potential risks:

- Be sure to identify yourself as a paralegal.
- Don't say anything in a voice mail you wouldn't want posted on a freeway billboard or on the Internet.
- Remember that others can probably access your voice mail without your knowledge, listening to, forwarding, and deleting messages.
- If you have something confidential to say, leave a message asking that person to call you back.
- Many law firms and corporations automatically generate an audio file of all voice mails so anything you say may be easily preserved

Email

Most of us rely on email for the majority of communications with coworkers, vendors, clients, witnesses, and opposing counsel. However, email has its own potential ethical issues. There are a few general rules:

- E-mail messages are backed up each night when your computer system is backed up, so even deleted e-mails can be retrieved.
- Identify yourself as a paralegal in business e-mails.
- Write with the same level of formality as with other business communications.
- Print e-mails to include in the file if that information would have normally been put in a memo or letter.

- Do not copy clients on emails to experts and opposing counsel. Forward the email to clients to avoid clients accidentally hitting “reply all.”

Email Attachments

Take the time to be sure you are sending correct version of the document at issue, and that the attorney and client are revising, commenting on, and ultimately signing correct version. If appropriate, convert the document to a PDF or remove the metadata using a tool such as the one available with Word 2007. Although not all metadata will be removed, it is better than leaving in all revisions.

Once the document is finalized, exchange full copies of the document and

signature pages, not just the signature page. It can be a PDF or a hard copy, but it should be clear which version of the document was signed. As an extra precaution, have all parties initial each page. That could be helpful in verifying which document the parties intended to sign.

Communications via Email with Opposing Counsel

Do not assume that emails with urgent info, such as the need to cancel or postpone depositions, etc., will be read and voice mails will be heard. And despite the ease with which cancellations may be made, attorneys and parties must still have a defensible reason for doing so.

The digital age is an exciting time, but be sure not let electronic conveniences override your ethical responsibilities.

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. You may follow her on Twitter @paralegaethics and her blog at <http://paralegal-ethics.blogspot.com>. She may be contacted at ethics@txpd.org.

Pro Bono Contest Winners Announced

Last fall, the State Bar's Paralegal Division along with Texas Lawyers Care jointly sponsored a contest for members of the Division who either joined the State Bar's Pro Bono College or reported their pro bono hours. Winners would receive free registration to the 2010 State Bar of Texas Annual Meeting to be held on June 10–11 in Fort Worth. Paralegals Cynthia Worthington and Lyla Malolepszy were selected as the winners of the contest. In addition to receiving free registration to the State Bar's Annual Meeting (a \$300 value), both Cynthia and Lyla were recognized for their pro bono efforts at the Paralegal Division's luncheon on June 11.

The State Bar is grateful for the contributions of paralegals, particularly in the areas of access to justice. Paralegals are encouraged to report their pro bono hours at the Paralegal Division's website at www.txpd.org, and click on the Members Only-tab.

Employed with Murray Pelletier in Dallas for 14 years, Cynthia Worthington has volunteered for Legal Aid of NorthWest Texas since January 2009.

Lyla Malolepszy has been employed with the Law Office of Donald Johnston in Sherman for 7 years and she has been a volunteer paralegal with Legal Aid of NorthWest Texas for 10 years. Lyla has been a member of the State Bar of Texas Pro Bono College since 2004.

Membership in the Pro Bono College is free for a paralegal who performs 50 hours a year of pro bono service utilizing their paralegal skills for pro bono legal matters. Benefits of the Pro Bono College include a certificate signed by the Chief Justice of the Supreme Court and State Bar President, a complimentary subscription to the monthly *LegalFront* e-newsletter and recognition at the State Bar of Texas Annual Meeting. More importantly, paralegals performing pro bono work have the satisfaction of knowing that they have used their professional expertise to assist indigent clients who otherwise would have been denied justice.

Congratulations to both Cynthia and Lyla.

The Rain in Spain . . . Fell Mainly in Barcelona

By Debra Crosby

In April, I went to Spain for the first time, on the Division-sponsored annual trip with a bunch of really friendly people, some of whom I had never met, some of whom I knew well. And what a trip it was!

We arrived in Sevilla, a charming, historic city on the banks of the Guadalquivir River, on Saturday, April 24. We did our best to ignore our nagging jet lag as we walked happily around the narrow streets of the historic district, where our hotel was located. We wandered around the lovely city, which was finishing up its annual April fair. The streets were filled with women wearing gorgeous flamenco dresses, and carrying their ever-present fans. What a romantic and festive atmosphere! We had dinner together that evening with our local tour guide, Nieves, a vivacious and knowledgeable Spanish woman who was always willing to go the extra mile for us, no matter what we asked of her.

After sleeping late on Sunday, we went out on a guided tour of the city, which included the city's gothic cathedral, reportedly the world's largest, as well as the royal palace, formerly a Moorish alcazar, or fortress, that was converted, as was the cathedral, into Christian use once the Catholics, under Ferdinand and Isabella, wrested Spain from over 700 years of Moorish control. It was fascinating how the Muslim architecture was remodeled into churches and palaces, and yet the ornate Moorish touches remain as beautiful embellishment to the Christian architecture.

On Monday, we traveled to Granada, home of the fabulous Alhambra, formerly a Moorish palace and fortress. The gardens of the Generalife are a part of this property and are lush, filled with trees and flowers, and with water, in the form of fountains, everywhere. The Moors val-



ued water and considered it to be a precious gift to be offered to guests. I have wanted to visit the Alhambra since I was a girl and first learned of it in Spanish class. I was not disappointed.

Alhambra sits high on a hill overlooking Granada, the view being to the

north, from where the enemy would (and eventually did) come. The Sierra Nevada mountain range looms over Granada as well, providing breathtaking scenery to stun even the most jaded visitor.

We had lunch outdoors at a café nearby and enjoyed the perfect weather.

We even sneaked in a little shopping. Granada is a lovely European city, bustling and busy, yet beautiful and historic, its wide boulevards lined with trees and flowers.

The next day we were free to wander Sevilla at our leisure, and we explored the cobblestone streets, enjoyed the food at the wonderful (and ubiquitous) tapas bars, and shopped for postcards and gifts for friends and family at home.

That evening, we attended a performance at El Patio Sevillano, by a local flamenco troupe. I never knew that flamenco includes not only dancing, but also singing and music. Flamenco is a very emotional experience. You didn't need to understand Spanish to get the message, told in song and dance, of tortured romance and world weariness. Someone asked me if I understood what the female dancer was singing about, and I replied that I didn't understand all the words, but I was certain that it probably had something to do with a man – one she wished were dead, or one she'd like to kill. It was an evening of incredible artistry, beautiful dancing and stirring music.

The next day we headed for Cordoba, where we visited the place that was my personal favorite – the Mezquita, or mosque, which is now a Catholic cathedral. This structure was built (and added onto) by Romans, Moors and Catholics. Once an enormous mosque, with hundreds of columns decorated with Moorish arches, the building was converted by the Catholics into a church – but the basic structure of the mosque remains, surrounding the church completely.

The church was built literally in the middle of the mosque. Even the conquering Catholics seemed to have had a respect for the incredible architecture of the building they took over. In fact, when Ferdinand saw the church, he admonished the archbishop who supervised the construction, saying, "You have destroyed what was unique in the world." It is an amazing place, steeped in history and architectural beauty, from the Muslim high altar to the sheer size and beauty of its halls. This is a place not to be missed in any tour of Spain.



After the tour of the mosque, we visited the Alcazar de los Reyes Cristianos, one of the hubs of the Inquisition, but with yet another astoundingly vast and beautiful garden, and the Juderia, the medieval district once home to Cordoba's Jewish community. There remains a very small synagogue, the last remaining trace of the Jews who once lived there. The Juderia remains as an historic district in Cordoba, with winding, narrow streets and ancient buildings. The lovely Avenida de Flores was one of my favorite streets, lined with

window boxes filled with blooming flowers.

Our next full day excursion was to the coastal city of Cadiz, which lays claim to Ferdinand Magellan and Amerigo Vespucci, two great world explorers. The city of Cadiz looks very much like Havana, so they say, and is a beautiful place to visit. I could see myself lingering at one of the hotels there on the beach. Cadiz is a place to roam, explore and relax, and also has an enormous cathedral and a bustling market place.



We then traveled to Jerez, home of Spain's sherry industry. We had a sherry tasting with tapas. While I learned that sherry is not my cup of tea, so to speak, I did buy a bottle of the excellent vinegar that they also manufacture there. If you stand in the rooms where the wood barrels hold the aging sherry and vinegar, you can breathe the rich aromas of the fermenting liquids. A feast for the senses.

On the following day we set out for Carmona, yet another charming and historic Andalusian city. Also the home of a Moorish alcazar, Carmona sits on a hillside where you can view the surrounding area and look out over the lovely "white" city. Andalusia's cities are often white stucco with tiled roofs, to keep their occupants cool in the warm

summers. The landscapes are dotted with such villages, picturesque places each with a charm of its own. We returned to Sevilla for a fantastic tapas lunch, wandered the city at will in the afternoon, and then had a farewell dinner that night.

After the group left the following morning, Norma Hackler, Rhonda Brashears and I set off for Barcelona, to extend our trip for a few days and to visit that fabulous city. We weren't disappointed, except for the fact that we could have stayed longer! Barcelona sits on the coast of the Mediterranean Sea. It looks like Paris, with wide boulevards, lovely parks and trees. We explored the architecture of Gaudi, which is everywhere, culminating in a visit in the rain to his life's work, La Sagrada Familia, the enormous cathedral that has been a work in progress since the late 1800s.

Even though rain fell all during our last day in Barcelona, that didn't stop us from walking around the city, soaking (literally and figuratively) in as much as we could while we were there. We visited Las Ramblas, a famous street also designed for pedestrians, surrounded by small side streets filled with shops and cafes, beckoning all who pass by to linger for awhile longer. Maybe that rainy day made that coffee we stopped for taste all the better.

Alas, we had to leave the next day for a whirlwind trip to Madrid, where we spent 24 hours before flying back home.

One thing I learned about Spain is that I'd like to go back and see more of it. It is a fascinating country, beautiful and diverse, with so much more to see and do than we could see and do in a week's time. But isn't that the best way to end a trip – wanting more?

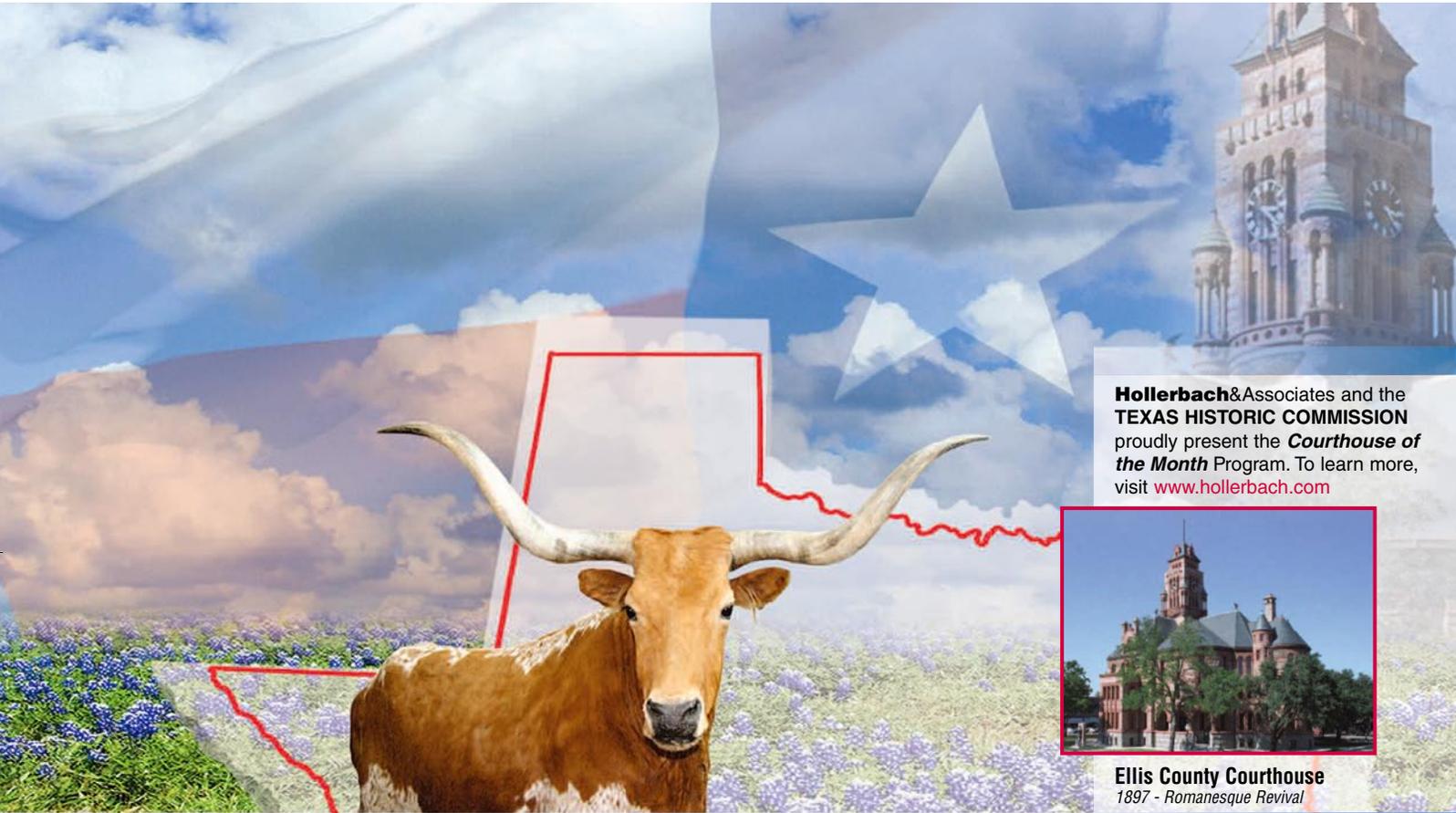
Debra Crosby is a freelance paralegal in Austin. She is a Charter Member of the Paralegal Division, past President of the Paralegal Division, former Paralegal Division Director and Committee Chair.

[In 2011, the Paralegal Division is sponsoring a trip to Germany. For detailed information on the 2011 Germany trip, please go to www.txpd.org under the News category on the home page.]

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