

SUMMER 2013 VOL. 19 NO. 1

*Texas Paralegal Journal*

# LESSONS FROM ATTICUS FINCH

# When You Have to Find the Right Experts



Ron Luke, JD, PhD — Economic analysis of medical and vocational damages; reasonableness of medical charges



Mary L. Hoane, CPA/CFF, MBA — Analysis of lost earnings capacity and economic damages



Brian Buck, MD — Independent medical examinations and life care planning



J. William Wellborn, MD — Independent medical examinations and life care planning



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# PRESIDENT'S *Message*

by Joncilee Davis, ACP, President, Paralegal Division

How true the old adage is that “time flies when you are having fun.” I can hardly believe this is my last President’s message. The last 365 days have been truly amazing, and I will treasure them always. The 2012-2013 Board has worked hard for you this year and accomplished some great things. I am proud to have served with these directors this year.

Remember that question about which six people you would invite to dinner? Let’s change it up: If you could work with any attorney for a week, who would you pick? I would choose Atticus Finch. As one of the most prominent citizens in Maycomb during the Great Depression, Atticus is relatively well off in a time of widespread poverty. Because of his intelligence, calm wisdom, and “do-gooder” status, Atticus is respected by everyone from the rich to the poor. He is a single dad raising two children, Jem and Scout. Mrs. Finch passed away when Scout was two years old. Ironically, neither of his children really look up to him at the start of the novel. Atticus is older than the other children’s fathers, and he does not have time to hunt or fish due to his profession. By the end of the novel, both Jem and Scout are absolutely devoted to their father and have a new appreciation



for what he does for a living and how he is perceived by the town.

One of the well-known quotes from the novel is: “You never really understand a person until you consider things from his point of view... until you climb into his skin and walk around in it.” Atticus gives Scout a piece of moral advice that

governs her development for the rest of the novel. His advice is to live with sympathy and understanding toward others. This is Atticus’ principle by which he governs himself morally. One of the main themes in the book is the importance of moral education. Atticus practices the ethics of sympathy and understanding, and he preaches to Scout and Jem to never hold a grudge against the people of Maycomb. He recognizes that people have both good and bad qualities, and he is determined to admire the good while understanding and forgiving the bad. Atticus teaches his children to be tolerant of others’ shortcomings and forgive them for the same. He would impart the same advice to any paralegal working for him as well: To treat everyone with respect and try to consider things from the client’s perspective. While an attorney and paralegal have many cases, it is often the client’s only case, and it is very

important and personal to that client.

Atticus functions as the moral conscience of Maycomb, as well as the novel itself. As a counselor, others turn to him in times of trouble. He is the voice of reason. He is firmly committed to justice and has an optimistic view of mankind. Atticus is a true southern gentleman. I imagine him teaching ethics to attorneys and paralegals and helping others to become more moral in their practices. If around today, he would be a big supporter of paralegals joining the Paralegal Division and attending CLE to better themselves. As a paraphrase of Atticus’ closing argument, education is the key to unlocking the ignorance that causes prejudice.

The basis for this year’s messages has been the characters from *To Kill a Mockingbird*. We have explored Boo Radley, Scout Finch, and now Atticus Finch. Do you identify with one of these characters? Did you attend a social event or volunteer for a position with the Division, thereby not being a recluse like Boo? Did you seek out some continuing education like Scout would do? Are you optimistic and just like Atticus?

Thank you for this opportunity to serve as your 2012-2013 President. It has been a wonderful journey. I hope you have grown this year, just as I have grown.

The *Texas Paralegal Journal* (TPJ), the Paralegal Division’s official magazine, is looking for student contributors to the Fall 2013 issue. We would like to know what your concerns are, as students.

Please submit a question to Heidi Beginski, TPJ editor @ TPJ@txpd.org **no later than August 1, 2013** and, if selected, we will find answers from seasoned paralegals from different parts of the State of Texas.

Your question and the answer will be included in the Fall 2013 issue of the TPJ.

# TPIJ

## Texas Paralegal Journal

### Focus on...

#### Lessons from Atticus Finch

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# EDITOR'S *Note*

By Heidi Beginski, TBLS-BCP

**"M**iss Jean Louise? Miss Jean Louise, stand up. Your father's passing." This line is spoken at the conclusion of the trial in Harper Lee's 1960 Pulitzer Prize winning novel "To Kill A Mockingbird," and repeated in the film of the novel two years later. It speaks to the honor due to all who battle tyranny, especially those who fight for the falsely accused.

Despite a brilliant and impassioned defense, Atticus Finch has just lost a criminal trial. Finch defended Tom Robinson, the black man falsely accused of what in 1930s Alabama was the gravest of sins, the rape of a white woman. Finch's defense of the innocent man was scorned by the local white community, but that didn't dissuade him from taking the case, or from doing his best to win it.

After the verdict, when Finch starts to exit the courtroom, the crowd of black spectators who had attended the trial to lend moral support to the innocent man (they were forced to sit in the courtroom's balcony) all stand. The black community leader, Rev. Sykes, delivered this line to Finch's daughter, Scout, who was sitting next to him in the balcony.

Finch does the job that must be done, but that other people are unwilling and afraid to do. That was the standard he lived by. He did not have one set of morals for business and one for family, one for weekdays and one for weekends. He was incapable of doing anything that would broach the inviolable sanctity of his conscience. He made the honorable decision, even when that decision was unpopular.

Finch understood that a man's integrity was his most important quality—the foundation upon which his honor and the trust of others was built. Stripped of integrity, a man becomes weak and impotent, no longer a force for good in his family or community.

Wherever injustice appears, there is always an Atticus Finch to battle it, and to inspire us to battle it, too. He doesn't always win; but battle it he does. And when he passes, we should stand up, and give him the honor he's due.



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State Bar of Texas

# Paralegal Division

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- » **E-Group Forum:** Join the members-only forum with hot topics, forms, ethics, and general questions posted and answered by paralegals. The eGroup is a way for members to share information and to obtain input to help address questions. Say you have a question and think the group would be a good resource; you could send your question to the eGroup. In a matter of minutes, you can have an answer to your question, a fresh idea about the matter, or a lead in the right direction. The amount of time that you can save with the eGroup is worth the cost of membership alone.
- » **CLE:** The Paralegal Division provides many opportunities to obtain CLE. Every year the Paralegal Division sponsors the Texas Advanced Paralegal Seminar (TAPS), a 3-day CLE seminar where you can obtain up to 14 hours of CLE for one low great price. A majority of the topics are TBLS approved for those board certified paralegals. If you are not able to attend TAPS, the Paralegal Division provides other opportunities by providing at least 3 hours of CLE in your district and online CLE. The Paralegal Division has over 60 different CLE topics available online for those paralegals that are not able to attend CLE outside of the office. You can obtain your CLE hours while at your computer.
- » **Mentor Program:** The mentor program is available to all members of the Paralegal Division. The purpose of this program is to provide support on topics such as ethics, career advancement, professionalism, and the Division. Mentors will provide support, guidance, and direction to new paralegals that will strengthen their links to the paralegal community, and contribute to their success as a paralegal. Protégés also have access to valuable networking opportunities with other paralegals and the legal community through their mentor, as well as at state-wide and district Paralegal Division events.

Membership criteria and additional member benefits can be found at [www.txpd.org](http://www.txpd.org) under “Membership” tab. All applications are accepted and processed online at [www.txpd.org/apply](http://www.txpd.org/apply). Dues payment accepted by check, money order or credit card (\$5 convenience fee is charged for all credit card payments). Questions regarding membership in the Paralegal Division can be forwarded to [pd@txpd.org](mailto:pd@txpd.org) or [memberchair@txpd.org](mailto:memberchair@txpd.org).

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# TEXAS BOARD OF LEGAL SPECIALIZATION

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This year's certification applications are currently available through July 15, 2013. Please request a form via email to [tbls@tbls.org](mailto:tbls@tbls.org).

Examination for Paralegal Board Certification will be November 9, 2013 in Austin.

#### PARALEGAL SPECIALTY AREAS

Bankruptcy Law  
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Family Law  
Personal Injury Trial Law  
Real Estate Law

### New Specialty Area

TBLS announces the addition of its newest specialty area, Bankruptcy Law, to its paralegal certification program. Bankruptcy Law is the first new specialty area for paralegals since Real Estate and Estate Planning & Probate were added in 1998.

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- 30 hours of Continuing Legal Education in the specialty area
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#### About TBLS

Texas Board of Legal Specialization, authorized by the Supreme Court of Texas, is the nation's largest and most successful legal board certification program. It certifies attorneys in 21 specialty areas of law and paralegals in seven specialty areas. TBLS serves as a resource by listing all certified attorneys and paralegals online. TBLS works to ensure that the citizens of Texas receive the highest quality legal services. To learn more about Board Certification and TBLS visit [www.tbls.org](http://www.tbls.org).

LESSONS  
FROM  
ATTICUS  
FINCH





By Andrew W. Eichner

Imagine that you have been asked to participate in Career Day at a local elementary school. You are the only legal professional in attendance and finally your time to present has come. You run through your day-to-day and talk about what life is like in the legal profession: the people you encounter, the problems you work on, and the importance of what you do. The children are rapt with attention and you leave time at the end for questions and comments. As soon as you ask “Does anyone have any questions?” a pensive-looking child raises his hand. The child asks, “What is the best thing about your job?”

You’re about to spurt out an answer, but the depth of the question sinks in and you pause for a moment to think. The question—though seemingly simple—turns out to be more complex than you originally presumed. One possible answer runs through your mind: “Well, legal professionals make a lot of money!” You dismiss the idea almost as quickly as it came to you. Money, while enticing, isn’t what this job is about—and, as the tired idiom tells us, money doesn’t buy happiness. Plus, lots of hard-working legal professionals don’t make the kinds of money that television and movies would have you think.

Another thought crosses your mind: “Well, the job does command a lot of respect.” Again, this doesn’t seem like the right answer. While working in the legal profession is very respectable, the job isn’t about lording your knowledge over others, especially the people who come to you seeking help. And, judging from all of the lawyer jokes you know, you suspect that respect may not be so high on the list of feelings that are associated with legal professionals.

Finally, the perfect answer dawns on you. Speaking with enthusiasm and pride, you answer, “The best thing about working in the legal profession is that I get to help people. Every day I get to try to set things right, even when it’s not the easy thing to do.”

...

I chose to go to law school because I wanted to help people. Of course, the legal profession has a large number of different types of career paths, each requiring different skill sets. In the months leading up to graduation, I thought about the type of lawyer I wanted to be and asked myself what I thought was the most important thing about the profession. The subject extended far beyond questions like “Do I want to practice as a litigator or a transactional attorney?” or “Do I prefer to work in civil or criminal law?” Examining the many different types of careers that the field offers, I realized each legal job lets you help others, but each also presents you with its own unique challenges.

As any experienced legal professional can tell you, the work can test your professional values as well as the strength of your character. The ABA Journal frequently reports lawyers who abuse their clients (and their colleagues) and websites like Above the Law ([www.abovethelaw.com](http://www.abovethelaw.com)) thrive on stories of lawyers acting in selfish, erratic, and downright deviant ways. Despite mandatory ethics education requirements for both lawyers and paralegals, the media abounds with stories of legal professionals in Texas and beyond tossing aside their clients’ interests in the pursuit of satisfying their own agendas.

I am almost certain that in the vast majority of instances where ethical or moral violations occur the legal professionals responsible did not expressly intend to violate the rules. In law school, our Professional Responsibility professor explained that most lawyers unknowingly tiptoe over the metaphorical line of ethics violations, only realizing they have crossed it once they have shuffled deep into corruption. However, regardless of intent, the result of crossing the line is to hurt the very people that we are professionally obligated to help.

Although popular entertainment and the media all too often reinforce negative legal stereotypes, there are noteworthy exemplars in the legal community that remind us of the values of justice, courage, and selflessness. While only a fictional character, one particular



lawyer has ingrained himself in the public psyche as the embodiment of ethics in the legal profession and has become the role model for many young lawyers entering the field, myself included. Atticus Finch, from Harper Lee's classic novel *To Kill A Mockingbird*, is the perfect example of what a legal professional should aspire to be. At the core of the novel is Atticus's defense of Tom Robinson, an innocent black man who has been charged with raping a white woman. Fighting against the social pressure of suffocating racism in 1930s Alabama, Atticus shows staunch resolution in seeking justice for the innocent while pursuing truth and the rule of law, all at the risk of suffering both personal and professional harm. Atticus's passionate defense of his client demonstrates his belief that the rule of law should not only be driven by reason, but should be essential to how we

live together as a society.

To a young lawyer, Atticus's story serves as a reminder that the legal profession is about far more than riches, fame, or prestige. Fundamentally, the profession is about helping people. As the novel shows, this is not always an easy task: there are often personal and professional hurdles standing in the way. Unfortunately, the human aspect of practicing law is too often lost in the analysis of legal issues without accounting for the individuals at their core. As legal professionals, we must remember that every decision we make is aimed towards helping a real person solve their problems.

Even as early as law school, I heard the debate of whether law is a business or a profession. In truth, it is a combination of the two. I don't think calling law a business is a sin, but it should not be at the expense

of our professional integrity. While the desire to collect paychecks is a strong motivator, it is crucial that we never forget that we are social servants and defenders of justice. This holds true regardless of what type of legal professional you are or what field you practice in. Criminal or civil, corporate or public interest, lawyer or paralegal or judge, the same universal rule applies: our job is to help people. In other words, try to be like Atticus Finch—you'll be a better legal professional because of it.

*Andrew W. Eichner is an associate at the law firm of Nix, Patterson & Roach in Daingerfield, Texas. His primary areas of practice are complex commercial, consumer protection, and class action litigation. He graduated from The University of Texas School of Law in 2012.*

## ASK YOUR PD

Following is a question the *Texas Paralegal Journal* received from a student member, and selected answers received from seasoned PD members.

**Question:** *For students that are already in the workforce with families and are making a career change it is hard to find jobs as a paralegal that one will hire you with little experience and without such a significant pay cut. Most jobs want lots of experience. What is your advice on how to transition into the paralegal field without suffering financially?*

Christine Bradford, Lancaster

### Responses:

My advice is to start networking as soon as allowable. Talk to teachers, other paralegals, department heads, etc. on how to market yourself and also how to get some experience. After you graduate sign up with a temp agency for part time work to gain experience and keep putting your resume out there. Network through the TXPD group and the other paralegal

groups in your area. If you won't work in some parts of town, etc., that is not being flexible and will not get you far. Also, look up volunteer opportunities to get your foot in the door. Make yourself a valuable resource. If you are new to the field you will have to prove yourself, but if you work hard at it, you will eventually find a comfortable position that is a good match for you.

Kimberley J. Baldrige, Austin

My advice on how to transition into the paralegal field with little experience is to first look at a company's in-house paralegal jobs at which you can utilize your current background work experience. Since in-house positions will vary in the type of day-to-day functions, it might be a lot easier than finding an entry level paralegal position at a law firm.

Patti Bradshaw, Dallas

First of all, I applaud your desire to transition into the paralegal field and I base my response on the notion that you are a

paralegal studies student attending either a junior college or a university program. It also sounds as though you are already in the workforce and want to make that important transition into the legal world.

Initially you may suffer financially in an entry level position, but an entry level position often turns into a full paralegal career. I also highly encourage you to obtain your Certified Paralegal designation as quickly as possible after completion of your paralegal studies program. Use your time continuing to work full time to be on the lookout for an opening. I advise you to visit with your paralegal studies faculty and make them aware of your desire to find an entry level position with a law firm, maybe an abstract/title company, a District or County Clerk's office or, depending on the area where you live, maybe an oil company working for in-house counsel. Be willing to make that leap of faith; build your experience and never give up.

Lydia P. McBrayer, CP, Midland

# Careful What You Wish For: by Juror No. 1

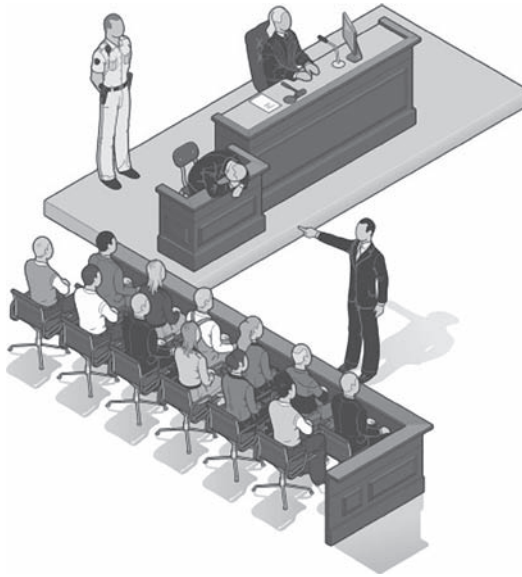
By Jay Williams

## I. Jury Selection

One of the fundamental rights afforded to us as United States citizens is the opportunity of a trial by our peers. While on the surface that is a novel idea, when that jury summons arrives in the mailbox, groans and the feeling of dread soon follow. Count myself among those groaning and feeling that dread when I received my jury summons one day in April 2009. The court was in an all too familiar location for me. Each time I receive a jury summons (with the exception of one I received in 1989), I go to the criminal courts' building that is located next to the Dallas County Jail. This particular summons instructed me to report on a Friday, which is unusual as trials in Texas generally commence on a Monday or a Tuesday.

After arriving and taking my seat toward the back of the Central Jury Room, figuring on the showing of the video on being a juror, I braced myself for a long wait. As the clerk addressed us, I slowly realized there would be no video shown this day. Instead, the clerk advised us the selection process was for a capital murder trial. This has been a goal of mine since I became eligible to serve as a juror, to sit on a gruesome, grisly murder trial. Now I sat very close to attaining my goal. Scheduled to begin the second week of August, one of the first questions posed to the group involved scheduling conflicts. Seeing that none of my cases had an August trial date and I had no vacation scheduled, I had no conflict. Of course, many lined up to question if they had scenarios that would preclude them from serving as a juror. Not believing I would be sitting on the jury, I did not give much of a thought to what my work schedule would entail.

Next, court staff informed us the attorneys would review our answers in the questionnaire packets they would



hand us and determine who they would interview in person beginning the day after Memorial Day. The juror number on the summons determined the order of the interviews. I reviewed my summons and noted I was Juror Number 6. I mentally prepared myself for the call I might receive to interview with the attorneys the day after the Memorial Day holiday. I still did not believe, however, that my being a paralegal would make me a candidate to sit on the jury.

Several members of the court staff then handed out a packet for each potential juror. In Texas, potential jurors must complete an extensive questionnaire that details background, thoughts on various social issues, and most important, whether one could render a verdict of guilty on a death case and recommend the death penalty. I completed the 18-page questionnaire in about an hour, and turned it in to the presiding clerk. As I walked up to the desk, I made a note that I had given my information from the pool as there was another group of over 800 potential jurors scheduled for that afternoon to go through the same process.

The call for the interview came in about a month later. The court adminis-

trator was very personable and informative about the process. I am not sure how long she has been doing this, but her experience with jury selection for death penalty cases showed during our call. She informed me I was the first for the interviews, which told me there was something in the responses from the first five potential jurors that disqualified them from serving. Again, I did not believe I would be a good candidate because of my professional background. Past *voir dire* experiences taught me I should not clear my calendar for August.

As expected before a big event in trial preparation, chaos ensued the day of my interview. I arrived earlier than the prescribed time and waited in the hall for about 15 minutes. A sheriff then escorted me into the waiting area of the room where the interview would take place. He then told me they had not prepared the room for the interview prior to the holiday weekend, so there would be a delay in my start time. About an hour later, I entered the room where the attorneys were waiting for me. Intimidation almost sat in immediately. I counted four attorneys for the State of Texas, three attorneys for the defendant, and the defendant himself was at the other end of the table from me. My seat was between the visiting judge overseeing the interview and a court reporter. Upon my swearing in, the judge gave a few brief instructions on the interview process, including his own determination at the end of the interview if I was still a viable candidate to be a juror. Then, an attorney for the State began her questioning. Immediately she zeroed in on my experience as a paralegal. She discovered the amount of terminology I recalled from my days of working in criminal defense nearly 20 years ago and seemed impressed on how we conversed. She then focused on various aspects of the case and explained how Texas law handles death penalty cases.

I then fielded questions from the attorneys for the defendant. He also complimented my legal knowledge, and indicated he knew an attorney I previously worked for pretty well. Then he began his questioning. He focused on whether I could truly impose a sentence of death upon

someone convicted of capital murder. He seemed to phrase the questions in a different way to make me think whether I could really sentence someone, especially the age of this particular defendant, to die for their actions. I remember having to give careful consideration about how I was going to answer a question before I actually did respond, and it started to give me second thoughts about wanting to serve on a capital murder jury.

Finally the session ended and I felt as if the mob had interrogated me. All that was missing was the bright spotlight shining in my face and being in a darkened room with a single chair and table. Nevertheless, I did leave with more of an appreciation of the system of selecting jurors for a trial as serious as capital murder.

A former co-worker emailed me about a month later and said that one of the defense attorneys had called their office to speak with my former boss. He asked if I could impose the death penalty and my boss almost immediately replied that he did not think I could. That response did surprise me as I recalled the trials in which I assisted him he taught me to look at all sides of what occurs at trial. I figured I would really have to implore that principle as a juror. I still believed, however, that I would not be among the jurors selected to serve.

I had not given much thought to the proceedings until my phone rang one day toward the end of July. I recognized the number as that of the court administrator and I braced myself. She informed me the attorneys selected me and I would be "juror number one" on the panel. The first thing I could think to say was "lovely." However, I realized I have a duty as a citizen of the United States to answer the call to serve on a jury of one's peers. I went around and told my attorneys when I would be out of the office. The administrator told me the attorneys expected the trial to last two weeks, which did not sit well with a few of my bosses. However, I offered that unless the judge required sequestration, I would come in after the day's proceedings to take care of any mail, faxes or other deadlines that needed my immediate attention.

## II. Trial Proceedings

My first day of being on the jury arrived. I had always seen news coverage of these events, but I never knew how fascinating it is being a juror in a capital murder case! My fellow jurors are a diverse group of people: schoolteachers, businessmen, and an employee of the local rapid transit authority. One of the alternate jurors was an attorney! He did corporate legal work, but recalled when he has been in court. I also learned that one of the jurors was sitting on his third capital murder case. THIRD! I did not think someone could serve on more than one capital murder jury. Maybe my hope of getting off the rolls for jury duty selection is a bit premature.

We heard from six witnesses the first day, including two local news reporters. Both reporters interviewed the defendant shortly after he was booked into the jail. The defendant showed no remorse during either interview. It was hard to believe that someone who was 19 years old felt his life had no purpose! It became apparent to the jury he had no role models growing up. He also apparently did not have any type of relationship with his father that could prepare him for life's challenges. I thought I would have no real problem agreeing to not only return a verdict of guilty, but also to recommend the death sentence. But the defendant expects to receive the death penalty. It made me think: should we give in to his demand and recommend death? Or should we call his bluff and recommend life in prison without the possibility of parole?

The state put on its entire case to determine guilt or innocence in two days. We saw an abundance of video evidence: the jail interviews, the video of the investigation after someone reported the incident to the authorities. The defense then presented its case on the morning of day three. I believe they knew the result of the guilt/innocence phase of the trial before it even started. Their main task was to attain a sentence of life in prison rather than to raise reasonable doubt so the jury would return a not guilty verdict. After lunch, both sides gave their closing arguments and we retired to deliberate. After selecting our presiding juror (fortunately not yours truly), we took a preliminary

vote. Everyone voted for a guilty verdict. However, a few of the jurors had questions they wanted answered before committing to their vote. We discussed many of the items introduced into evidence. We took a final vote and agreed on a verdict of guilty of capital murder. The deliberation took about 15 minutes.

## III. Sentencing Proceedings

The punishment phase of the case began the morning of Day 4. This was probably the most difficult part of our roles as jurors in this case. The State began with the testimony of the mother of one of the victims. This could have been a very emotional day for us. Fortunately, the State only had her on the stand a short time. Then, we heard from more experts from various professions in law enforcement.

We started Day 5 with a family member of the other victim. His mother described the start of his new family life before his premature and sudden death. The State then questioned an officer who had worked with the Gang Unit of the local police department for the past 12 years. It was very interesting to hear how gangs operate. We then heard from a former inmate incarcerated at the same time as the defendant. He was in a cell across from the defendant and seemed a bit nervous testifying. He was very slight in size and it was a wonder he was able to survive being in jail. The next witness was an assistant warden at one of the jails. She also served for a time at the prison where Texas Death Row inmates live. We saw a video of the surroundings of the facility and an idea of what life is like for death row inmates. She took the stand for what the attorneys advised would be about a half hour worth of testimony. Then, we sat through 2½ hours of testimony. After she had completed her testimony, the judge apologized for keeping us so long, and said that it was his decision to keep going. He also told us we might get the case on Monday afternoon. We would see.

On Day 6 the State rested its portion of the punishment phase of the case. The defense then began with their opening statement. The lead defense attorney announced they could call as many as 19 witnesses. Nineteen! We silently hoped



that would not be the case. They began with two psychiatrists who explained the varying degrees of mental illness. The day ended with the beginning of testimony from family members of the defendant.

Day 7 continued where Day 6 left off. On Day 8 the defense continued with the testimony of more family members, most notably the defendant's sister and his last stepfather. Then, the defense rested its part of the punishment phase. The State then put on its rebuttal portion. This included testimony from a psychologist and the younger brother and sister of one of the victims. The State then rested its rebuttal case and the defense rested, not calling any rebuttal witnesses.

The judge then informed us closing arguments would take place in the morning and he would give our instructions. He hoped we would begin deliberations later that morning. The judge also informed us that if we did not reach a decision by the end of the day, the attorneys requested sequestration at a local hotel. As predicted, that brought a universal groan from the jury panel. At the same time, I was surprised that we had kept our normal lives up to this point. We received daily instruction to avoid all media coverage of this case and not to speak to anyone about our involvement. The bailiff made sure each day we exited the courthouse from a back entrance so we would avoid the media.

Day 9 began with the receipt of instructions from the Judge. Then, both sides presented their closing arguments. Interestingly, all the attorneys participated: both the attorneys for the State of Texas, and all three attorneys for the defendant. At about 11:30 a.m., we began our deliberations. We ordered lunch from a local sandwich shop, taking a small break from our decision. Then we returned to our deliberations. While not divulging the content of our conversations, we took our time in considering each part of the questions we needed to answer. In death penalty cases in Texas, there are two questions for the jury to consider. First, the jury must consider whether the defendant would commit a criminal act and be a danger to society. Second, the jury must decide if, after considering all the evidence, the character of the defendant, and

his background, a sentence of life without the possibility of parole would be a better sentence for the defendant to serve. We reviewed the evidence that had been introduced, and even requested a few items to refresh our memory. Finally, at about 4:45 p.m., we were finally able to take a vote on the first question. We were unanimous in our vote that the defendant would indeed commit a criminal act and be a danger to society. Shortly after the vote, we loaded into a shuttle bus and were transported to the hotel where we would spend the night before taking our second vote.

I woke at 4:30 a.m., not having slept more than a couple of hours the entire night. I thought I had my mind made up the previous afternoon. I suppose my subconscious determined I should be thinking about my decision more. After breakfast, we assembled in the hotel lobby, and then we boarded the shuttle to go back to the courthouse. We then began our discussions on the second question: Would a sentence of life without the possibility of parole be a better sentence for the defendant to serve? A preliminary vote showed seven of the jurors voting no and five were undecided. Like the first question, we broke the second question into parts to discuss each aspect, knowing we could very well vote for the State of Texas to put a date certain for the defendant's death. We took another vote after 3½ hours and the tally was a unanimous vote of no—that the defendant would receive a date to receive a dose of lethal injection from the State. Then, we went around the room and each juror gave his/her thoughts on the vote. It was a very solemn atmosphere as we weighed the enormity of our decision. Afterward, the foreperson certified our vote by signing the Jury Charge and announcing to the bailiff that we had our decision.

We assembled into the courtroom for the last time and the Judge read our decision into the record. As we retired to the deliberation room, a couple of the jurors noticed the defendant was smirking at us as we filed out. I did not see this, but again his lack of remorse was on display. From what I heard and later read, he was practically laughing at the family members of the victims while they confronted

him during the victim impact portion of the trial. The judge then came back to the deliberation room to speak with us and thank us for our service. The judge remarked he typically does not support the death penalty; however, in this case, he felt we made the right decision. He also informed us this was his first capital murder trial as judge. He shook each of our hands and then invited us to stay and speak with the attorneys if we wanted. Most of us did and a few of us offered some words of constructive criticism on how the attorneys handled various matters in the case. The prosecution team stayed with us the longest as one of the defense attorneys was preparing for three more death penalty cases scheduled for trial during the upcoming year, and said this team of attorneys would be working together on a case set for trial next summer. After speaking with the attorneys, a couple other jurors and I accompanied our foreperson to speak with the local media. He did a great job fielding the questions from both the print and electronic media. As I stood by and nodded in agreement with the foreperson to one of the questions, a member of the local newspaper asked if I was on the jury panel. I acknowledged that I was and she asked me a couple of questions and asked if she could quote me. I consented, gave my quotes, and identified myself. Sure enough, my quotes appeared newspaper edition of the story, as well as the online edition of the story.

#### IV. Epilogue

Overall, I am extremely proud I served on that jury. The professional mix of the members was from all occupations and lifestyles. We all worked together as a team, and not one person attempted to take over the deliberations by forcing his/her views on everyone else. The enormity of this decision will stay with me for a long, long time. My only regret is that I did not express my condolences to the families of the victims in this case. I can only hope that they will find closure in this matter (if they have not already) and carry on the legacy of their sons.

*Jay Williams is a paralegal at Stovall & Associates, P.C. in Dallas.*

# The Dismissal Rule and Expedited Process for Paralegals

By Christine R. Cook, PHP

**I**mportant changes to the Texas Rules of Civil Procedure and Texas Rules of Evidence, including new discovery and self-authentication procedures, are effective March 1, 2013. The following article is intended to provide you the information contained in Supreme Court of Texas, Misc. Docket No. 13-9022; Final Approval of Rules For Dismissals and Expedited Actions.

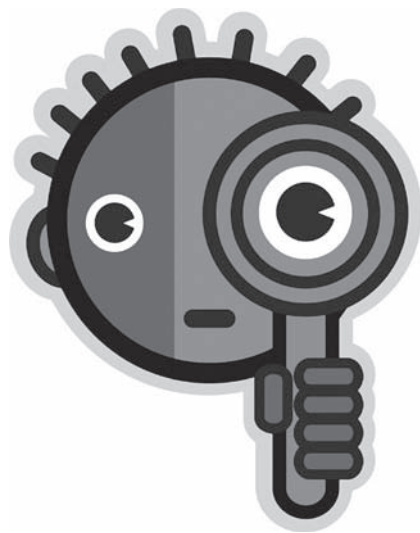
## History:

On February 12, 2013 the Supreme Court of Texas signed an Order [Misc. Docket No. 13-9022] in accordance with the Act of May 25, 2011, 82nd Leg., R.S., ch. 203, 66 1.01, 2.01 (HB274), amending section 22.004 of the Texas Government Code, thereby adopting Rules 91a and 169 of the Texas Rules of Civil Procedure and Rule 902(c) of the Texas Rules of Evidence, and amending Rule 47 and 190 of the Texas Rules of Civil Procedure.

By order dated November 13, 2012, in Misc. Docket No. 12-9191, the Court promulgated Rules of Civil Procedure 91a and 169 and Rule of Evidence 902(10)(c), as well as amendments to Rules of Civil Procedure 47 and 190, and invited public comment. Following public comment, the Court made revisions to the rules. This Order incorporates those revisions and contains the final version of the rules, effective March 1, 2013.

Rule of Civil Procedure 91a and Rule of Evidence 901(10)(c) apply to all cases, including those pending on March 1, 2013. Rule of Civil Procedure 169 and the amendments to Rules of Civil Procedure 47 and 190 apply to cases filed on or after March 1, 2013, except for those filed in justice court.

This Order also promulgates a revised civil case information sheet required by Rule of Civil Procedure 78a, in accordance with the amendments to Rule of Civil



Procedure 47, and applies to cases filed on or after March 1, 2013. <sup>(1)</sup>

## Comments to 2013 changes:

Texas Rule of Civil Procedure 47 is amended to require a more specific statement of the relief sought by a party. The amendment requires parties to plead into or out of the expedited actions process governed by Rule 169, added to implement section 22.004(h) of the Texas Government Code. Except in a suit governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice & Remedies Code, a suit in which the original petition contains the statement in paragraph (c)(1) is governed by the expedited actions process. The further specificity in paragraphs (c)(2)-(5) is to provide information regarding the nature of cases filed and does not affect a party's substantive rights. <sup>(2)</sup>

Texas Rule of Civil Procedure 91a is a new rule implementing section 22.004(g) of the Texas Government Code, which was added in 2011 and calls for rules to provide for the dismissal of causes of action that have no basis in law or fact on motion and without evidence. A motion to dismiss filed under this rule must be ruled on by

the court within 45 days unless the motion, pleading, or cause of action is withdrawn, amended, or nonsuited as specified in 91a.5. If an amended motion is filed in response to an amended cause of action in accordance with 91a5(b), the court must rule on the motion within 45 days of the filing of the amended motion and the respondent must be given an opportunity to respond to the amended motion. The term "hearing" in the rule includes both submission and an oral hearing. Attorney fees awarded under 91a.7 are limited to those associated with challenged cause of action, including fees for preparing or responding to the motion to dismiss. <sup>(3)</sup>

Texas Rule of Civil Procedure 169 is a new rule implementing section 22.004(h) of the Texas Government Code, which was added in 2011 and calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed \$100,000.

The expedited actions process created by Rule 169 is mandatory; any suit that falls within the definition of 169(a)(1) is subject to the provisions of the rule.

In determining whether there is good cause to remove the case from the process or extend the time limit for trial, the court should consider factors such as whether the damages sought by multiple claimants against the same defendant exceed in the aggregate the relief allowed under 169(a)(1), whether a defendant has filed a compulsory counterclaim in good faith that seeks relief other than that allowed under 169(a)(1), the number of parties and witnesses, the complexity of the legal and factual issues, and whether an interpreter is necessary.

Rule 169(b) specifies that a party who prosecutes a suit under this rule cannot recover a judgment in excess of \$100,000. Thus, the rule in *Greenhalgh v Service Lloyds Ins. Co.*, 787 S.W.2d 938 (Tex. 1990), does not apply if a jury awards damages in excess of \$100,000 to the party. The limitation in 169(b) does not apply to a counterclaimant that seeks relief other than that allowed under 169(a)(1).

The discovery limitations for expedited actions are set out in Rule 190.2, which is also amended to implement section



22.004(h) of the Texas Government Code.<sup>(4)</sup>

Rule 190 is amended to implement section 22.004(h) of the Texas Government Code, which calls for rules to promote the prompt, efficient, and cost-effective resolution of civil actions when the amount in controversy does not exceed \$100,000. Rule 190.2 now applies to expedited actions, as defined by Rule 169. Rule 190.2 continues to apply to divorces not involving children in which the value of the marital estate is not more than \$50,000, which are otherwise exempt from the expedited actions process. Amended Rule 190.2(b) ends the discovery period 180 days after the date the first discovery request is served; imposes a fifteen limit maximum on interrogatories, requests for production, and requests for admission; and allows for additional disclosures. Although expedited actions are not subject to mandatory additional discovery under amended Rule 190.5, the court may still allow additional discovery if the conditions of Rule 190.5(a) are met.<sup>(5)</sup>

Texas Rule of Evidence 902(10)(c) is added to provide a form affidavit for proof of medical expenses. The affidavit is intended to comport with Section 41.0105 of the Civil Practice and Remedies Code, which allows evidence of only those medical expenses that have been paid or will be paid, after any required credits or adjustments. See *Haygood v Escabedo*, 356 S.W.3d 390 (Tex. 2011).<sup>(6)</sup>

The following became effective March 1, 2013:

## DISMISSAL RULE

### TRCP 91a. Dismissal of Baseless Causes of Action

#### TRCP 91a.1 Motion and Grounds.

Except in a case brought under the Family Code or a case governed by Chapter 14 of the Texas Civil Practice and Remedies Code, a party may move to dismiss a cause of action on the grounds that it has no basis in law or fact. A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought. A cause

of action has no basis in fact if no reasonable person could believe the facts pleaded.

#### TRCP 91a.2 Contents of Motion.

A motion to dismiss must state that it is made pursuant to this rule, must identify each cause of action to which it is addressed, and must state specifically the reasons the cause of action has no basis in law, no basis in fact, or both.

#### TRCP 91a.3 Time for Motion and Ruling.

A motion to dismiss must be:

- (a) Filed within 60 days after the first pleading containing the challenged cause of action is served on the movant;
- (b) Filed at least 21 days before the motion is heard; and
- (c) Granted or denied within 45 days after the motion is filed.

#### TRCP 91a.4 Time for Response.

Any response to the motion must be filed no later than 7 days before the date of the hearing.

#### TRCP 91a.5 Effect of Nonsuit or Amendment; Withdrawal of Motion.

- (a) The court may not rule on a motion to dismiss if, at least 3 days before the date of the hearing, the respondent files a nonsuit of the challenged cause of action, or the movant files a withdrawal of the motion.
- (b) If the respondent amends the challenged cause of action at least 3 days before the date of the hearing, the movant may, before the date of the hearing, file a withdrawal of the motion or an amended motion directed to the amended cause of action.
- (c) Except by agreement of the parties, the court must rule on a motion unless it has been withdrawn or the cause of action has been nonsuited in accordance with (a) or (b). In ruling on the motion, the court must not consider a nonsuit or amendment not filed as permitted by paragraphs (a) or (b).
- (d) An amended motion filed in accordance with (b) restarts the time periods in this rule.

### TRCP 91a.6 Hearing; No Evidence Considered.

Each party is entitled to at least 14 days' notice of the hearing on the motion to dismiss.

The court may, but is not required to, conduct an oral hearing on the motion. Except as required by 91a7, the court may not consider evidence in ruling on the motion and must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.

### TRCP 91a.7 Award of Costs and Attorney Fees Required.

Except in an action by or against a governmental entity or a public official acting in his or her official capacity or under color of law, the court must award the prevailing party on the motion all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court. The court must consider evidence regarding costs and fees in determining the award.

### TRCP 91a.8 Effect on Venue and Personal Jurisdiction.

This rule is not an exception to the pleading requirements of Rules 86 and 120a, but a party does not, by filing a motion to dismiss pursuant to this rule or obtaining a ruling on it, waive a special appearance or a motion to transfer venue. By filing a motion to dismiss, a party submits to the court's jurisdiction only in proceedings on the motion and is bound by the court's ruling, including an award of attorney fees and costs against the party.

### TRCP 91a.9 Dismissal Procedure Cumulative.

This rule is in addition to, and does not supersede or affect, other procedures that authorize dismissal.

## RULES FOR EXPEDITED ACTIONS

### TRCP 47. Claims for Relief

An original pleading which sets forth a claim for relief, whether an original petition, counterclaim, cross-claim, or third party claim, shall contain:

- (a) A short statement of the cause of action sufficient to give fair notice of the claim involved;
- (b) ~~In all claims for unliquidated damages only the a~~ statement that the damages sought are within the jurisdictional limits of the court;
- (c) Except in suits governed by the Family Code, a statement that the party seeks:
  - (1) only monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees; or
  - (2) monetary relief of \$100,000 or less and non-monetary relief; or
  - (3) monetary relief over \$100,000 but not more than \$200,000; or
  - (4) monetary relief over \$200,000 but not more than \$1,000,000; or
  - (5) monetary relief over \$1,000,000; and

(ed) a demand for judgment for all the other relief to which the party deems himself entitled.

Relief in the alternative or of several different types may be demanded; provided, further, that upon special exception the court shall require the pleader to amend so as to specify the maximum amount claimed. A party that fails to comply with (c) may not conduct discovery until the party's pleading is amended to comply.

#### TRCP 169. Expedited Actions

- (a) *Application.*
  - (1) The expedited actions process in this rule applies to a suit in which all claimants, other than counter-claimants, affirmatively plead that they seek only monetary relief aggregating \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.
  - (2) The expedited actions process does not apply to a suit in which a party has filed a claim governed by the Family Code, the Property Code, the Tax Code, or Chapter 74 of the Civil Practice and

Remedies Code.

- (b) *Recovery.* In no event may a party who prosecutes a suit under this rule recover a judgment in excess of \$100,000, excluding post-judgment interest.
- (c) *Removal from Process.*
  - (1) A court must remove a suit from the expedited actions process:
    - (A) On motion and a showing of good cause by any party; or
    - (B) If any claimant, other than a counter-claimant, files a pleading or an amended or supplemental pleading that seeks any relief other than monetary relief allowed by (a)(1).
  - (2) A pleading, amended pleading, or supplemental pleading that removes a suit from the expedited actions process may not be filed without leave of court unless it is filed before the earlier of 30 days after the discovery period is closed or 30 days before the date set for trial. Leave to amend may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.
  - (3) If a suit is removed from the expedited actions process, then the court must reopen discovery under Rule 190.2(c).
- (d) *Expedited Actions Process.*
  - (1) Discovery. Discovery is governed by Rule 190.2.
  - (2) Trial Setting; Continuances. On any party's request, the court must set the case for a trial date that is within 90 days after the discovery period in Rule 190.2(b) (1) ends. The court may continue the case twice, not to exceed a total of 60 days.
  - (3) Time Limits for Trial. Each side is allowed no more than eight hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. On motion and a showing of good cause by any party, the court may extend the time limit to no more

than twelve hours per side.

- (A) The term "side" has the same definition set out in Rule 233.
- (B) Time spent on objections, bench conferences, bill of exception, and challenges for cause to a juror under Rule 228 are not included in the time limit.
- (4) *Alternative Dispute Resolution.*
  - (A) Unless the parties have agreed not to engage in alternative dispute resolution the court may refer the case to an alternate dispute resolution procedure once, and the procedure must:
    - (i) Not exceed a half-day in duration, excluding scheduling time;
    - (ii) Not exceed a total cost of twice the amount of applicable civil filing fees; and
    - (iii) Be completed no later than 60 days before the initial trial setting.
  - (B) The court must consider objections to the referral unless prohibited by statute.
  - (C) The parties may agree to engage in alternate dispute resolution other than that provided for in (A).
- (5) *Expert Testimony.* Unless requested by the party sponsoring the expert, a party may only challenge the admissibility of expert testimony as an objection to summary judgment evidence under Rule 166a or during the trial on the merits. This paragraph does not apply to a motion to strike for late designation.

#### TRCP 190. Discovery Limitations

##### **190.2 Discovery Control Plan—Suits Involving \$50,000 or Less Expedited Actions and Divorces Involving \$50,000 or Less (Level 1)**

- (a) *Application.* This subdivision applies

to:

- (1) ~~any suit in which all plaintiffs affirmatively plead that they seek only monetary relief aggregating \$50,000 or less, excluding costs, pre-judgment interest and attorneys' fees any suit that is governed by the expedited actions process in Rule 169, and~~
- (2) ~~unless the parties agree that Rule 190.3 should apply or the court orders a discovery control plan under Rule 190.4, any suit for divorce not involving children in which a party pleads that the value of the marital estate is more than zero but not more than \$50,000.~~

(a) ~~Exceptions. This subdivision does not apply if:~~

- (1) ~~The parties agree that Rule 190.3 should apply;~~
- (2) ~~The court orders a discovery control plan under rule 190.4; or~~
- (3) ~~Any party files a pleading or an amended or supplemental pleading that seeks relief other than that to which this subdivision applies.~~

~~A pleading, amended pleading (including trial amendment), or supplemental pleading that renders this subdivision no longer applicable may not be filed without leave of court less than 45 days before the date set for trial. Leave may be granted only if good cause for filing the pleading outweighs any prejudice to an opposing party.~~

(eb) ~~Limitations.~~ Discovery is subject to the limitations provided elsewhere in these rules and to the following additional limitations:

- (1) ~~Discovery Period.~~ All discovery must be conducted during the discovery period, which begins when the suit is filed and continues until ~~30 days before the date set for trial~~ 180 days after the date

the first request for discovery of any kind is served on a party.

- (2) ~~Total Time for Oral Depositions.~~ Each party may have no more than six hours in total to examine and cross-examine all witnesses in oral depositions. The parties may agree to expand this limit up to ten hours in total, but not more except by court order. The court may modify the deposition hours so that no party is given unfair advantage.

- (3) ~~Interrogatories.~~ Any party may serve on any other party no more than ~~25~~ 15 written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

- (4) ~~Requests for Production.~~ Any party may serve on any other party no more than 15 written requests for production. Each discrete subpart of a request for production is considered a separate request for production.

- (5) ~~Requests for Admissions.~~ Any party may serve on any other party no more than 15 written requests for admissions. Each discrete subpart of a request for admission is considered a separate request for admission.

- (6) ~~Requests for Disclosure.~~ In addition to the content subject to disclosure under Rule 194.2, a party may request disclosure of all documents, electronic information, and tangible items that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses. A request for disclosure made pursuant to this paragraph is not considered a request for production.

- (dc) ~~Reopening Discovery.~~ When the filing of a pleading or an amended or supplemental pleading renders this subdivision no longer applicable, If a suit is removed from the expedited actions process in Rule

169 or, in a divorce, the filing of a pleading renders this subdivision no longer applicable, the discovery period reopens, and discovery must be completed within the limitations provided in Rules 190.3 or 190.4, whichever is applicable. Any person previously deposed may be redeposed. On motion of any party, the court should continue the trial date if necessary to permit completion of discovery.

#### 190.5. Modification of Discovery Control Plan

The court may modify a discovery control plan at any time and must do so when the interest of justice requires. Unless a suit is governed by the expedited actions process in Rule 169, ~~t~~The court must allow additional discovery:

- (a) ~~Related to new, amended or supplemental pleadings, or new information disclosed in a discovery response or in an amended or supplemental response, if:~~
  - (1) ~~The pleadings or responses were made after the deadline for completion of discovery or so nearly before that deadline that an adverse party does not have an adequate opportunity to conduct discovery related to the new matters, and~~
  - (2) ~~The adverse party would be unfairly prejudiced without such additional discovery;~~
    - (a) ~~Regarding matters that have changed materially after the discovery cutoff if trial is set or postponed so that the trial date is more than three months after the discovery period ends.~~

#### TRE 902. Self-Authentication

...

- (10) ~~Business Records Accompanied by Affidavit.~~

...

- (a) ~~Medical expenses affidavit.~~ A party may make prima facie proof of medical expenses by affidavit that substantially complies with the following form:

...

Affidavit of Records Custodian of \_\_\_\_\_

STATE OF TEXAS §

§

COUNTY OF \_\_\_\_\_ §

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who, being by me duly sworn, deposed as follows:

My name is \_\_\_\_\_. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a custodian of records for \_\_\_\_\_. Attached to this affidavit are records that provide an itemized statement of the service and the charge for the service that \_\_\_\_\_ provided to \_\_\_\_\_ on \_\_\_\_\_. The attached records are a part of this affidavit.

The attached records are kept by \_\_\_\_\_ in the regular course of business, and it was the regular course of business of \_\_\_\_\_ for an employee or representative of \_\_\_\_\_, with knowledge of the service provided, to make the record or to transmit information to be included in the record. The records were made in the regular course of business at or near the time or reasonably soon after the time the service

was provided. The records are the original or a duplicate of the original.

The services provided were necessary and the amount charged for the services was reasonable at the time and place that the services were provided.

The total amount paid for the services was \$ \_\_\_\_\_ and the amount currently unpaid but which \_\_\_\_\_ has a right to be paid after any adjustments or credits is \$ \_\_\_\_\_.

\_\_\_\_\_  
Affiant

SWORN TO AND SUBSCRIBED before me on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

Notary's printed name: \_\_\_\_\_ My commission expires: \_\_\_\_\_

*Christine R. Cook, PHP is a paralegal at Jenkins & Kamin, LLP in Houston.*

- (1) TX Sup. Ct. Misc. Docket No. 13-9022, p1
- (2) TX Sup. Ct. Misc. Docket No. 13-9022, p7
- (3) TX Sup. Ct. Misc. Docket No. 13-9022, pp 5-6
- (4) TX Sup. Ct. Misc. Docket No. 13-9022, pp 9-10
- (5) TX Sup. Ct. Misc. Docket No. 13-9022, pp 12-13
- (6) TX Sup. Ct. Misc. Docket No. 13-9022, p 14

## Working with a Financial Advisor

Craig Hackler

Branch Manager/Financial Advisor

Raymond James Financial Services, Inc., Member FINRA/SIPC

The world of 50 years ago was a lot different than it is today. An individual often worked at the same job all his or her adult life, lived in the same house, and stayed married to the same spouse. In those days, too, one spouse could support a family, paying for college ordinarily didn't require taking out a second mortgage, and people could look forward to retiring on Social Security and possibly a company pension.

Today, your hopes and dreams are no different. Like most people, you probably want to buy a home, put your children through college, and retire with a comfort-

able income. But the world has become a more complex place, especially when it comes to your finances. You may already be working with financial professionals—an accountant or estate planner, for example—each of whom advises you in a specific area. But if you would like a comprehensive financial plan to help you secure your future, you may benefit from the expertise of a financial advisor.

**Services a financial advisor may provide**  
Even if you feel competent enough to develop a plan of your own, a financial

advisor can act as a sounding board for your ideas and help you focus on your goals, using his or her broad knowledge of areas such as estate planning and investments. Specifically, a financial advisor may help you:

- Set financial goals
- Determine the state of your current financial affairs by reviewing your income, assets, and liabilities, evaluating your insurance coverage and your investment portfolio, assessing your tax obligations, and examining your estate plan
- Develop a plan to help meet your financial goals which addresses your current financial weaknesses and builds on your financial strengths
- Make recommendations about specific products and services (many advisors are qualified to sell a range of financial products)



- Monitor your plan and periodically evaluate its progress
- Adjust your plan to help meet your changing financial goals and to accommodate changing investment markets or tax laws

#### Some misconceptions about financial advisors

Maybe you have reservations about consulting a financial advisor because you're uncertain about what to expect. Here are some common misconceptions about financial advisors, and the truth behind them:

- Most people don't need financial advisors—While it's true that you may have the knowledge and ability to manage your own finances, the financial world grows more intricate every day. A qualified financial advisor has the expertise to help you navigate a steady path towards your financial goals.
- All financial advisors are the same—Financial advisors are not covered by uniform state or federal regulations, so there can be a considerable disparity in their qualifications and business practices. Some may specialize in one area such as investment planning, while others may sell a specific range of products, such as insurance. A qualified financial advisor generally looks at your finances as an interrelated whole, and can help you with many of your financial needs.
- Financial advisors serve only the wealthy—Some advisors do only take on clients with a minimum amount of assets to invest. Many, however, only require that their clients have at least some discretionary income.
- Financial advisors are only interested in comprehensive plans—Financial advisors generally prefer to offer advice within the context of a client's current situation and overall financial goals. But financial advisors frequently help clients with specific matters such as rolling over a retirement account or developing a realistic budget.



- Financial planners aren't worth the expense—Like other professionals, financial advisors receive compensation for their services, and it's important for you to understand how they're paid. But a good financial advisor may help you save and earn more than you'll pay in fees.

**How are financial advisors compensated?**  
When it comes to compensation, advisors fall into four categories:

- Salary based—You pay the company for which the advisor works, and the company pays its advisors a Salary
- Fee based—You pay a fee based on an hourly rate (for specific advice or a financial plan), or based on a percentage of your assets and/or income
- Commission based—The advisor receives a commission from a third party for any products you may Purchase
- Commission and fee based—The advisor receives both commissions and fees. You'll need to decide which type of compensation structure works best for you, based on your own personal circumstances.

#### When is it time to consult a financial advisor?

In many cases, a specific life event or a perceived need may prompt you to seek professional financial planning guidance. Such events or needs might include:

- Getting married or divorced
- Having a baby or adopting a child
- Paying for your child's college education
- Buying or selling a family business
- Changing jobs or careers
- Planning for your retirement
- Developing an estate plan
- Coping with the death of your spouse
- Receiving an inheritance or a financial windfall

In these situations, a financial professional can help you make objective, rather than emotional, decisions. However, you don't have to wait until an event occurs before you consult a financial advisor. A financial advisor can help you develop an overall strategy for approaching your financial goals that not only anticipates what you'll need to do to reach them, but that remains flexible enough to accommodate your evolving financial needs.

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# Scruples

## Ethics Themes in *To Kill A Mockingbird*

Ellen Lockwood, ACP, RP



**T**he primary theme of the novel *To Kill a Mockingbird* is the coexistence of good and evil.

As part of the legal profession, paralegals are witnesses to both the good and the bad in our society. Even if the area of law in which you work does not usually involve disputes, you have likely had positive and negative experiences with the parties and attorneys involved, as well as court and agency personnel.

The moral voice of Harper Lee's novel is attorney Atticus Finch. Despite experiencing evil, Atticus maintains his faith in people's ability to do the right thing. As a father, Atticus tries to educate his children about doing the right thing, even if it is difficult and unpopular, and also tries to explain to his children the evil they witness and experience.

Ethics is one of the most important attributes and requirements for members of the legal profession. One is either ethical or not. One cannot pick and choose when to be ethical or which rules to follow. Paralegals should stay far away from the unethical line so as to avoid accidentally committing an ethical violation, and to avoid the appearance of impropriety. As paralegals, we are responsible for knowing and following not only the ethics rules for paralegals, but also the Texas Disciplinary Rules of Professional Conduct for attorneys.

One of the requirements of the ethics rules is the obligation to report even suspected ethics violations to the appropriate party. That may be something as simple as educating a fellow paralegal that something she is doing is unethical, advising a

supervising attorney of an issue, making an ethics complaint against a member of the Paralegal Division, or submitting an issue to the State Bar UPL Committee.

As paralegals, we have a responsibility to educate ourselves regarding ethics rules as well as to help educate other paralegals about ethics. We also have an obligation to always do the right thing. That includes admitting our mistakes, not taking credit for the work of others, maintaining professionalism, and making sure our actions are above reproach.

The character of Atticus Finch is revered for being the personification of an ethical attorney who truly cares about his client, always does the right thing, even when it is difficult and unpopular, and who rises above the negative and evil actions of others. Although Atticus Finch is an attorney, the substance and motivations of his character are ones to which not only members of the legal profession, but everyone, should aspire.



*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 at [www.twitter.com/paralegaethics](http://www.twitter.com/paralegaethics). She may be contacted at [ethics@txpd.org](mailto:ethics@txpd.org).*



*et al.*

## Paralegals and TAPS Support Bike Rodeo in Dallas

By Susan M. Wilen

On April 13, 2013, the Texas Scottish Rite Hospital for Children held its fourth annual Bike Rodeo on the grounds of the hospital. The festivities started at 10:00 am and lasted until 1:00 pm. The weather was perfect and the event was a testament to organization and cooperation. The Bike Rodeo was a joint effort of the Texas Scottish Rite Hospital, Rotary Club of Dallas, the Dallas Police Department, the Dallas Fire Department, several troops of the Boy Scouts of America, and the Paralegal Division of the State Bar of Texas.

The Bike Rodeo included different safety stations in which bicycling skills were reinforced on obstacle courses and participants were instructed in hand signals, proper bicycle helmet use, and general street awareness. Each child who attended received a complimentary bike helmet at



registration and all children were encouraged to complete the safety stations on a bike. Many children arrived with bikes of their own, but bikes were provided by the hospital for children who did not have one.

During the rodeo, the Rotary Club of Dallas provided hamburgers, hot dogs, beverages, snacks, fruit, and wonderful chocolate chip cookies for everyone who

attended: children, parents, volunteers alike. The Dallas Police Department landed their police helicopter on the hospital grounds during the rodeo, allowing the kids to explore the helicopter and meet the pilots "up close and personal."

But the most enjoyable aspect of the day was witnessing the raffle of the bicycles assembled by paralegals at the Texas



Advanced Paralegal Seminar in October 2012. This was a new project of the Paralegal Division at TAPS; the bicycles were underwritten by law firms and paralegal associations from all over the State of Texas and assembled at the Thursday night social. The raffle was open to children who did not have bikes of their own; 43 bikes were raffled and 43 children had extraordinary smiles on their faces when they won.

There were over 450 children who attended the rodeo, accompanied by more than 700 adults. This year's event was more successful than any other year for the Texas Scottish Rite Hospital for Children. They were deeply indebted to the Paralegal Division for providing all the bikes for the raffle. The banner at the raffle clearly recognized the Paralegal Division's participation and support. Brava to all the paralegals who made this wonderful project a reality.

Our special thanks is owed to the following underwriters of the bicycles:

- Brown McCarroll, LLP—Austin
- Cantey Hanger, LLP—Fort Worth



- Capital Area Paralegal Association—Austin
- Cox Smith—San Antonio
- Denton County Paralegal Association—Denton
- Fort Worth paralegal Association—Fort Worth
- Kevin Clark, P.C.—Fort Worth
- Locke Lord, LLP—Dallas
- Lovett Law Firm—El Paso
- NGP Energy Capital Management—Irving
- Nix, Patterson & Roach—Daingerfield
- Peltier, Bosker, & Griffin, P.C.—Houston
- Robert E. Raesz, Jr. Law Office—Austin
- Underwood law Firm, LLP—Amarillo
- Vernier & Associates, P.C.—The Woodlands

*Susan M. Wilen is a nurse paralegal at Brin & Brin, P.C. in San Antonio and a past president of PD.*

## The 31st Annual Texas Forum

By Mariela Cawthon, CP, TBLS-BCP

**O**n February 22, 2013 paralegals, attorneys and paralegal educators joined together for the 31st annual Texas forum. The event, which is sponsored by Texas Lawyer, was held at City Place Conference Center in Dallas. It was one of the best attended Forums in recent history—there were approximately 199 in attendance. There were four hours of superb CLE offered including one hour of ethics. The event was split into two tracks: an advanced track for attorneys and paralegals and a second “boot camp” track for students and younger paralegals.

The morning started with welcoming remarks and introductions by former Justice Linda B. Thomas, Esq., Chair of the State Bar of Texas Standing Committee on Paralegals and a current mediator with JAMS. Justice Thomas has been instrumental in advancing the paralegal profession, including writing the first Texas appellate opinion on the recovery of fees

for work performed by paralegals.

After the welcoming remarks, the groups branched off into the two tracks. The advance track included an outstanding presentation by Barb Kirby, Esq. of Texas Wesleyan University on Trial Ethics for the Attorney-Paralegal Team. She was followed by renowned blogger and self-proclaimed technology-nut, Tom Mighell, Esq. who spoke highlighted some of the top legal iPad apps in the market. The paralegal boot camp started the morning with a Wendi Rogers, TBLS-BCP's presentation on preparing trial notebooks, followed by Julie Sherman, TBLS-BCP's presentation on the essentials of any Trial Tackle box. Their morning session ended with Ethical Billing Practices by Kay Redburn, TBLS-BCP.

Both groups came together during the lunch break for a presentation by the day's Key Note speaker, Dr. Jan DeLipsey. Dr. DeLipsey discussed some key considerations to take into account during jury

selection. Dr. DeLipsey is best known for her *pro bono* work in the civil case of Billy Ray Johnson, a black man with mental disabilities who has beaten and left for dead on an isolated country road by four white men in Linden, Texas.

Finally, the group was treated to a special presentation by Cynthia Minchillo, TBLS-BCP and Thomas G. Jacks, Esq. on the *Voir Dire* Team and how paralegals can assist attorneys during this most important process.

Since November 1982, the Standing Committee on Paralegals has sponsored the Texas Forum, an annual conclave of attorneys, paralegals, educators, and paralegal managers, who meet to discuss paralegal utilization best practices and professional development practices.

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# 2013 TRIP TO SCOTLAND



**O**n April 20, the Paralegal Division Travel Group of 28 persons departed the US to begin its journey to Scotland. The group arrived exhausted from a long flight, but excited to begin the discovery of Scotland. That first day was spent getting to know the area. It was Sunday and we visited a botanical garden watching the locals play ball, a theatre group perform, munching on local fare, and having a sip of tea. It was a beautiful day and the gardens were in full bloom. Later that day, after settling into the hotel, the group enjoyed a welcome dinner on the rooftop terrace of 29, a private members only restaurant. It was a beautiful setting inside a large tent with a large table set with glowing candelabras and white tablecloths...fit for a king (or Queen, one would say). Welcome to Scotland....

The Group began the next day with a guided tour of Glasgow with a Scottish local guide, Jan Phillip, visiting Glasgow's City Hall Chambers, St. Mungo's (Glasgow) Cathedral, and Kelvingrove Art Gallery. First stop was the Glasgow City Chambers, a grand and imposing edifice overlooking George Square. The building was completed in 1888 and has a beautiful marble staircase ascending to its offices and debate chamber.

After traveling around the city marveling at its great architecture, we stopped at St. Mungo's Cathedral. The Cathedral is the only medieval cathedral on the Scottish mainland to have survived the Protestant Reformation of 1560 virtually intact. It is built on the site where

St. Kentigern, or Mungo, the first bishop within the ancient British kingdom of Strathclyde, was thought to have been buried in AD 612. There is a myth that St. Mungo held his master's dead bird, a wild robin, in his hands and prayed over it, bringing it back to life; there is a stained glass of the robin inside the Cathedral. The present cathedral was built during the 13th to 15th centuries. Her Royal Majesty, Queen Elizabeth, attends services at St. Mungo's Cathedral during her visits to Glasgow.

Next stop was Kelvingrove Museum, which houses collections mainly from the McLellan Galleries and from the City Industrial Museum, which had been opened in 1870 in the former Kelvingrove Mansion. During World War II most of Kelvingrove's valuable works were housed at secret locations around the country.

After grabbing a bite to eat on the go, the bus continued on to pass by Glasgow University where some of us went in the bookstore for a bit of shopping.

Following the bus tour, we visited The Glasgow School of Art, which was built and established in the late 19th century by Charles Rennie Mackintosh. Mackintosh led a new movement in design and style which included an idiosyncratic variation of Art Nouveau and the Arts and Crafts movement. He is well known for his rose and willow motifs and for his furniture designs.

After the art school, we set out on our own to enjoy Glasgow by visiting a tea house for high tea, or a pub for local fare or for just wandering around to take in

the city. After freshening up back at the hotel, we set out for The Corinthian Club, another posh setting, for the evening's dinner to bid adieu to Glasgow.

Early Tuesday morning (the 23rd), the group boarded the bus to travel to Inverness through the Scotland Highlands with stops along the way; the scenic drive was breathtaking. We stopped for a guided tour of Stirling Castle. Knights, nobles and foreign ambassadors once flocked to the Royal Court at Stirling Castle to revel in the castle's grandeur. The Castle is one of Scotland's grandest, due to its imposing position and impressive architecture. It towers over some of the most important battlefields of Scotland's past including Stirling Bridge, the site of William Wallace's victory over the English in 1297, and Bannockburn where Robert the Bruce defeated the same foe in the summer of 1314. There is much to see at Stirling Castle: the Royal Palace, the Chapel, the Stirling Tapestries, Regimental Museum, the Great Hall, the Palace Vaults, and the Great Kitchen. It is truly a city within the walls of a castle. It is known that those who inhabited [controlled] Stirling Castle ruled Scotland.

One of the most interesting sites on the trip to Inverness was a stop to see the Hamish Highland Cattle. The cattle are called "coo" which in Texas is pronounced "cow." These beasts look like Texas longhorns with more hair. What a sight to see!

We arrived in Inverness, a quaint town in far northwest Scotland, late in the day after passing along many lakes, one of



which was Loch Ness. Loch is Scottish for lake. The next day, we toured Inverness, known as the home of the Loch Ness monster, stopping at the historic battle site at Culloden Moor. The group toured the museum at Culloden Moor and viewed its battlefield. Culloden Moor is a historical site of a battle between the British and Scots in the 1500's.

Later that day, some of the group traveled by boat on Loch Ness to Urquhart Castle (keeping an eye out for the Loch Ness monster). The boat trip was delightful and the weather was gorgeous. Urquhart Castle is located on the banks of Loch Ness and is impressive, despite its ruinous state. It is one of Scotland's largest castles and was at one time a medieval fortress. Today, you can still climb the tower that offers splendid views of the famous loch as well as the country side. Urquhart witnessed considerable conflict throughout its 500 year history. Everyone who visited the castle truly enjoyed the excursion: lovely boat ride, beautiful scenery, gorgeous weather and a lot of

exercise. Other travelers who stayed in Inverness spent the day in the shops and exploring Inverness. All in all, we had a great time in Inverness.

On the way to Edinburgh the next day, we stopped at a quaint bouquet hotel for a delicious lunch; visited the smallest whisky distillery in Scotland, Edradour, for a tasting and purchases, and Blair Castle. The whisky distillery, Edradour, produces only 4,000 vats of whisky per year in comparison to larger distilleries producing 4,000 vats per week. The group was given a presentation on how the whisky is made (absolutely no hops are used) and is placed in wine barrels to give the whisky different flavors. Blair Castle stands in its grounds near the village of Blair Atholl in Scotland. It is the ancestral home of the Clan Murray, and was historically the seat of the Duke of Atholl. Its beauty is in its surroundings that includes gardens and well-manicured grounds.

Our final day was spent in Edinburgh (pronounced Edinbro). The group was lead on a tour of the city by a local Scottish

guide, Richard Thompson. First stop was the Royal Yacht Britannia, where Princess Diana and Prince Charles spent their honeymoon. Although no longer used, Her Royal Highness, Queen Elizabeth, once traveled to many countries on this yacht representing Great Britain as well as entertaining many heads of countries. The Yacht was used for vacation travel as well as official state visits. Presidents Eisenhower, Ford, Reagan, and Clinton were guests on the Royal Yacht Britannia. The remainder of our time was spent discovering Edinburgh's Castle, local pubs, and shops along its cobbled streets. That evening, the group said its good-byes at the group's farewell dinner held at Howies Waterloo Place. By the end of the trip, the new travelers who joined the group had become old friends.

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# State Bar of Texas Paralegal Division



## *PD Mentor / Protégé Program*

Are you studying to be a paralegal, or are you new to the field?

Have you recently changed the type of law that you work in?

The Paralegal Division offers a mentor program to help you get started!

Participants receive direction and support on topics such as ethics, career advancement, and professionalism. Protégés also have access to valuable networking opportunities with other paralegals and the legal community through their mentor, as well as at state-wide and district Paralegal Division events.

### **Eligible PD members include:**

- Student members
- Active and Associate members with less than 3 years' work experience as a paralegal
- PD members changing the area of law on which they focus



*The mentor / protégé relationship can be very rewarding, with benefits extending long past the official end of the relationship.*

All of the PD mentors are Division members who have at least 7 years' experience working as a paralegal. Many of our mentors are also Division leaders and liaisons.

Mentors are located across the state and work in many areas of law.

*Protégés may be matched with a mentor who is not geographically close by; meetings may be held electronically based on the mentor and protégé's preferences.*

The mentoring program is a **free benefit** available to Paralegal Division members.

Join the PD today and let us match you with a mentor in your area of legal interest!

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