

FALL 2014 VOL. 20 NO. 2

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PRESIDENT'S *Message*

Clara Luna Buckland, C.P.

I want to share something that I experienced fairly early in my career as a paralegal. After a series of unfortunate events for the other side, an attorney once told me that I had gone out on a limb when dealing with the particular situation. I thought about his words then responded with, "Perhaps, but that is where the fruit is." And his response was, "Indeed!" You see, I had gone out of my comfort zone in this particular situation and pursued what I knew in my heart was the right course of action. In the end, I was left standing and gained a newfound respect from the attorney, and others involved. Plus, I gained the attorney's trust! That experience has steered my work to this very day, and it is this mindset that drives me.

When I decided to run for President of this organization that is near and dear to my heart I asked myself how I could be of service to you, what I could add as an individual and a leader, following in the footsteps of some of the very best leaders I have ever met. After considering this query thoughtfully, I decided that



what I can add is to share my thirst for learning—understanding the foreign, and to encourage each of you to take yourself out of your comfort zone. I urge you to challenge yourself with tenacity; constantly prove to yourself what you are capable of doing, even to that unbelieving or somewhat skeptical boss. I truly believe that

if you do so without fear of making a mistake or appearing silly or unrefined, but rather, seek guidance from your supervising attorney or anyone willing to share his/her knowledge, they will view you as courageous and appreciate that you willingly took a risk. We each have made mistakes, but it is important for us to consider what we learned from those experiences rather than allow our mistakes to limit us. There is no shame in trying, there is however, in never trying. Attempt something that you have never done before and you will amaze yourself, so long as you take no shortcuts, and give it your all. My goal is to help empower each of you to, through your demonstrated work, make believers of your supervising attorneys.

We each can do this—one paralegal and one attorney at a time. It is through this channel that I wholeheartedly believe we can grow our profession and the Paralegal Division.

In thinking about growth, I recall a recent conversation that I had with a former PD member who told me that she did not renew her membership because she did not really get anything out of it. Frankly, I was amazed because I have found that it is through service to others and sharing my knowledge that I gain, and have grown. Plus the networking, the help, and vast knowledge that you have shared throughout the years are phenomenal. I have grown not only personally, but professionally through my interactions with you. I look forward to serving as your president and learning from you. It is my hope that I will be a beacon to you—as you have been to me. I invite you to put your gifts to use and join us in serving our members.

In closing I want to leave you with this: Within each of us is the potential for meaningful, creative, and dynamic things. We are free to demonstrate our abilities, our wisdom, our understanding, and our strength in everything that we do—so why would we not?

"A great deal of talent is lost to the world, for the want of a little courage."
—Sydney Smith



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EDITOR'S *Note*

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

A cornerstone of education in your chosen field is the internship. The experience gained and the contacts formed will confirm your path and launch you on your way. The duties of an intern can vary widely, and in this month's cover article, Rhonda Beassie, the Assistant General Counsel for Texas State University System provides an outline for unpaid internships and related obligations under the Fair Labor Standards Act.

As you move from the unpaid intern to the employee, what do the compliance issues of the Affordable Care Act ("ACA") mean for you and your employer? Felicia Finston demystifies the language of the ACA for us in her article in this issue.

How many times has the attorney you work for attended mediation? Do you know what the mediator needs and wants to know from each party? Do your attorney's clients really know what to expect? Attorney-mediator Randy Akin's article in this issue provides practical tips from his perspective that will help anyone involved in the process.

Have you heard about MERP? If not, you need to. The Medicaid Estate Recovery Program is real, and since none of us can avoid getting older, you'll want to read attorney Karen Telschow Johnson's elder law article in this issue, so you are not overwhelmed when certain types of events occur.

PD's Professional Development chair, Deborah Andreacchi, TBLS-BCP, shares her thoughts on the importance of professional development in this issue. Spoiler alert: it's not just about obtaining continuing legal education.

Catch up on (or recall) some of the events from this year's Annual Meeting by reading about the Annual Meeting Luncheon, your new Executive Committee, and the recipient of this year's Exceptional Pro Bono Service Award, all in this issue.

Enjoy!

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- » **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 under “Membership” tab. All applications are accepted and processed online at 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 or memberchair@txpd.org.

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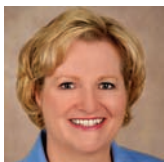
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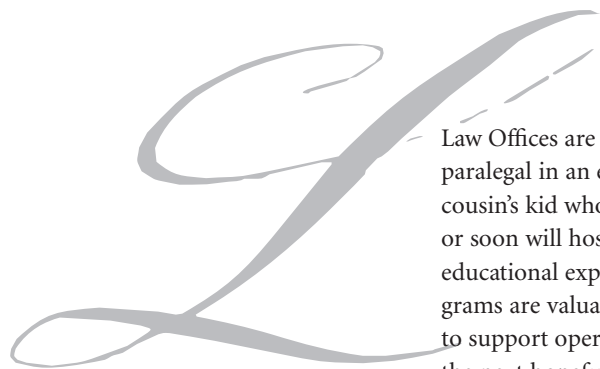
**TRAINED THROUGH
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Unpaid Internships & the FLSA:

Beware of Coffee and Copies

By Rhonda Beassie, Assistant General Counsel, Texas State University System



Law Offices are a natural breeding ground for those pursuing legal careers. Whether a paralegal in an externship class, a law student clerking with the firm, or the partner's cousin's kid who just needs something on his resume, chances are your office has hosted, or soon will host an intern. Structured appropriately, an internship provides valuable educational exposure to the trainee. For legal employers, clerkship and internship programs are valuable recruiting tools and may provide the benefit of additional man hours to support operations. The rights of interns are on the rise and before agreeing to host the next hopeful hand, employers should review their obligations under the Fair Labor Standards Act (FLSA) in light of recent federal guidance and litigation.

The Fair Labor Standards Act (FLSA) was passed in 1938. 20 U.S.C. 201-19. Since enactment, the FLSA and complementing state legislation governs the age of workers, hours worked, and minimum compensation paid to employees by covered employers. Two exceptions to the requirement to pay employees are relevant to internships: volunteers and trainees. Volunteers serving without a promise of payment in non-profit organizations or governmental agencies are exempt from the FLSA. 29 U.S.C. 203(e)(4)-(5), 29 C.F.R. 553.101. While congressional and charitable organizations may label interns as exempt volunteers, a for-profit entity cannot have a volunteer intern.

On the other hand, an employer providing a training program where the trainee receives the primary benefit of the on the job experience may not have to pay participants wages. *Walling v. Portland Terminal Co.*, 330 U.S. 143, 153 (1947). In *Walling*, when examining whether Portland Terminal's brakemen trainees were exempt from compensation under the FLSA, the U.S. Supreme Court identified six factors that removed the trainees from the definition of an employee. The trainee of yesteryear is, in most cases, the intern of 2014. Thus, 2010 the Department of Labor (DOL) issued Fact Sheet 71 articulating a six part test for determining if an unpaid internship qualifies as exempt from the FLSA. The DOL test is, at its core, a restatement and clarification of the *Walling* criteria. Specifically, the factors are:

1. The internship, even though it includes actual operation of the facilities of the employer, is similar to training which would be given in an educational environment;
2. The internship experience is for the benefit of the intern;
3. The intern does not displace regular employees, but works under close supervision of existing staff;
4. The employer that provides the training derives no immediate advantage from the



- activities of the intern; and on occasion its operations may actually be impeded;
5. The intern is not necessarily entitled to a job at the conclusion of the internship; and
 6. The employer and the intern understand that the intern is not entitled to wages for the time spent in the internship.

Department of Labor Fact Sheet 71 (April, 2010).

After Fact Sheet 71 was published, unpaid internships began making headlines with number of individual and class action law suits filed against high profile media companies. Most notable was litigation arising from the award winning movie “Black Swan.” Eric Glatt and Andrew Footman worked on the film as unpaid interns and claimed that instead of learning about film production, they worked long hours conducting menial tasks such as making coffee and copies.¹ Although the interns knowingly accepted unpaid positions, they later filed suit under the FLSA. Both parties moved for summary judgment and in rendering a decision that the interns qualified as employees under FLSA, the court analyzed the internships under each of the six DOL factors. *Glatt v. Fox Searchlight*, 293 F.R.D. 516, 543 (S.D.N.Y. 2013). Like the *Walling* court, the *Glatt* court found the second factor most compelling: whether the internship was primarily for the benefit of the intern. In *Walling* the brakemen left Portland Terminal with a marketable skill they could not have attained without having trained in the railroad industry. See, *Walling* at 150. Conversely, Glatt and Footman performed only low level tasks without specialized education or training. As such, the “Black Swan” internships were not deemed sufficiently educational to be exempt from FLSA. *Glatt* at 543.

While Fox Searchlight is appealing the decision, the outcome has caused a ripple effect across the media industry. PBS and Charlie Rose’s production company settled a class action FLSA suit by agreeing to pay

former “unpaid” interns \$110 a week for 10 weeks.² After being sued by interns in the summer of 2013, magazine conglomerate Conde Nast killed its internship program and then quietly settled.³ Fox Searchlight and NBC News now pay their interns,⁴ and it is likely many other employers have changed their programs to stay out of the limelight.

Other media and non-media employers continue to offer unpaid internships when tied to an educational program. The theory is that if the internship is academic in nature, it is for the primary benefit of the intern and exempt from the FLSA. In fact, many paralegal programs and ABA approved law schools will not permit paid externships or internships (depending upon the school’s definition) when the student receives academic credit for the experience.⁵ Unfortunately, employers cannot rely on academic credit alone to exempt a trainee from FLSA requirements. In *Glatt*, the court explicitly dismissed the impact of academic credit on the analysis. “A university’s decision to grant academic credit is not a determination that an unpaid internship complies.” *Glatt* at 537.

One recent decision provides some support for employers relying on academic credit provided for an internship. In *Schulman v. Collier Anesthesia*, former students of Wolford University’s Nurse Anesthesia Master’s Degree Program brought suit claiming they were entitled to minimum wage and overtime for work performed as a part of their degree required practicum. 2014 WL 2158505 (Middle D. of Fl.—Fort Meyers May 23, 2014). Using the six part test from the DOL, the court determined that although there was a question of fact as to whether the employer or the students benefited more from the internship, the students were not employees under the FLSA. The court was persuaded that the educational value of the internship excepted it from FLSA because it was a requirement of the master’s program, the students acknowledged they would not be paid, received hands on training, and each intern earned

academic credit for the experience.

School requirements and accreditation guidelines aside, the six part test will be applied by both the DOL and a court of law to determine whether interns are appropriately compensated under the FLSA. The moral of the story for employers is that interns must either be paid a minimum wage, or internships should be carefully designed to meet the DOL test. Law firm internships, should avoid assignments largely related to making coffee and copies and instead focus on expanding the education of the intern.

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Endnotes

1. Christina Ng, ‘Black Swan’ Unpaid Interns File Lawsuit Against Fox Searchlight, ABCNEWS, September 29, 2011, August 8, 2014, [HTTP://ABCNEWS.GO.COM/US/BLACK-SWAN-UNPAID-INTERNS-FILE-LAWSUIT-FOX-SEARCHLIGHT/STORY?ID=14632803](http://ABCNEWS.GO.COM/US/BLACK-SWAN-UNPAID-INTERNS-FILE-LAWSUIT-FOX-SEARCHLIGHT/STORY?ID=14632803).
2. Amanda Becker, PBS’ Charlie Rose Settles with Unpaid Interns as Lawsuits Spread, REUTERS, July 1, 2013, <http://www.reuters.com/article/2013/07/01/entertainment-us-interns-lawsuit-charlie-idUSBRE9601E820130701>.
3. Nicole Levy, Conde Nast Settles Intern-Pay Lawsuit, April 4, 2014, <http://www.capital-newyork.com/article/media/2014/04/8543247/conc%C3%A9-nast-settles-intern-pay-lawsuit>.
4. Susan Adams, In the Unpaid Internship Dead? June 14, 2013, <http://www.forbes.com/sites/susan-adams/2013/06/14/is-the-unpaid-internship-dead/>.
5. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL TO LAW SCHOOLS (2013–2014), Standard 305, Interpretation 305-3 (stating “A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation.”) available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3_authcheckdam.pdf.

The Power of Dividends in a Portfolio

Craig Hackler

Branch Manager / Financial Advisor

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

It wasn't so long ago that many investors regarded dividends as roughly the financial equivalent of a record turntable at a gathering of MP3 users—a throwback to an earlier era, irrelevant to the real action.

But fast-forward a few years, and things look a little different. Since 2003, when the top federal income tax rate on qualified dividends was reduced from a maximum of 38.6%, dividends have acquired renewed respect. Favorable tax treatment isn't the only reason, either; the ability of dividends to provide income and potentially help mitigate market volatility is also attractive to investors. As baby boomers approach retirement and begin to focus on income-producing investments, the long-term demand for high-quality, reliable dividends is likely to increase.

Why consider dividends?

Dividend income has represented roughly one-third of the total return on the Standard and Poor's 500 since 1926. According to S&P, the portion of total return attributable to dividends has ranged from a high of 53% during the 1940s—in other words, more than half that decade's return resulted from dividends—to a low of 14% during the 1990s, when investors tended to focus on growth.

If dividends are reinvested, their impact over time becomes even more dramatic. S&P calculates that \$1 invested in the Standard and Poor's 500 in December 1929 would have grown to \$49 over the following 80 years. However, when coupled with reinvested dividends, that same \$1 investment would have resulted in \$1,259. (Bear in mind that past performance is no guarantee of future results, and taxes were not factored into the calculations.)



If a stock's price rises 8% a year, even a 2.5% dividend yield can push its total return into double digits. Dividends can be especially attractive during times of relatively low or mediocre returns; in some cases, dividends could help turn a negative return positive, and also can mitigate the impact of a volatile market by helping to even out a portfolio's return.

Another argument has been made for paying attention to dividends as a reliable indicator of a company's financial health. Investors have become more conscious in recent years of the value of dependable data as a basis for investment decisions, and dividend payments aren't easily restated or massaged.

Finally, many dividend-paying stocks represent large, established companies that may have significant resources to weather an economic downturn—which could be helpful if you're relying on those dividends to help pay living expenses.

The corporate incentive

Financial and utility companies have been traditional mainstays for investors interested in dividends, but other sectors of the market also have begun to offer them. For

example, investors have been stepping up pressure on cash-rich technology companies to distribute at least some of their profits as dividends rather than reinvesting all of that money to fuel growth. Some investors believe that pressure to maintain or increase dividends imposes a certain fiscal discipline on companies that might otherwise be tempted to use the cash to make ill-considered acquisitions (though there are certainly no guarantees that a company won't do so anyway).

However, according to S&P, corporations are beginning to favor stock buybacks rather than dividend increases as a way to reward shareholders. If it continues, that trend could make ever-increasing dividends more elusive.

Differences among dividends

Dividends paid on common stock are by no means guaranteed; a company's board of directors can decide to reduce or eliminate them. However, a steadily growing dividend is generally regarded as a sign of a company's health and stability. For that reason, most corporate boards are reluctant to send negative signals by cutting dividends.

That isn't an issue for holders of preferred stocks, which offer a fixed rate of return paid out as dividends. However, there's a tradeoff for that greater certainty; preferred shareholders do not participate in any company growth as fully as common shareholders do. If the company does well and increases its dividend, preferred stockholders still receive the same payments.

The term "preferred" refers to several ways in which preferred stocks have favored status. First, dividends on preferred stock are paid before the common stockholders can be paid a dividend. Most preferred stockholders do not have voting rights in the company, but their claims on the company's assets will be satisfied before those of common stockholders if the company experiences financial difficulties. Also, preferred shares usually pay a higher rate of income than common shares.

Because of their fixed dividends, preferred stocks behave somewhat similarly to bonds; for example, their market value can

be affected by changing interest rates. And almost all preferred stocks have a provision that allows the company to call in its preferred shares at a set time or at a predetermined future date, much as it might a callable bond.

Look before you leap

Investing in dividend-paying stocks isn't as simple as just picking the highest yield. If you're investing for income, consider whether the company's cash flow can sustain its dividend.

Also, some companies choose to use corporate profits to buy back company shares. That may increase the value of existing shares, but it sometimes takes the place of instituting or raising dividends.

If you're interested in a dividend-focused investing style, look for terms such as "equity income," "dividend income," or "growth and income." Also, some exchange-traded funds (ETFs) track an index comprised of dividend-paying stocks, or that is based on dividend yield. Be sure to check the prospectus for information about expenses, fees and potential risks, and consider them carefully before you invest.

Taxes and dividends

The American Tax Relief Act of 2012 increased the maximum tax rate for qualified dividends to 20% for individuals in the 39.6% federal income tax bracket.

For individuals in the 25%, 28%, 33%, or 35% marginal tax bracket, a 15% maxi-

mum rate will generally apply, while those in the 10% or 15% tax bracket will still owe 0% on qualified dividends. Depending on your income, dividends you receive may also be subject to a 3.8% Medicare contribution tax.

Qualified dividends are those that come from a U.S. or qualified foreign corporation, one that you have held for more than 60 days during a 121-day period (60 days before and 61 days after the stock's ex-dividend date). Form 1099-DIV, which reports your annual dividend and interest income for tax accounting purposes, will indicate whether a dividend is qualified or not.

Some dividends, such as those paid by real estate investment trusts (REITs) and master limited partnerships, aren't taxed at the same rate as qualified dividends, and a portion may be taxed as ordinary income. Also, some so-called dividends, such as those from deposits or share accounts at cooperative banks, credit unions, U.S. savings and loan associations, and mutual savings banks actually are considered interest for tax purposes.

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How to Demystify the Language of the ACA for Your Employees

By Felicia Finston

With all of the confusion and controversy regarding the Affordable Care Act ("ACA"), sometimes called "Obamacare," the scope of this article may seem like a tall order. However, from an employer perspective, decipher-

ing the ACA is not as difficult as it would seem.

For 2015, the primary ACA compliance issue employers will face concerns the employer mandate also known as "pay or play" which generally requires employ-

ers who employ 50 or more full-time or full-time equivalent employees (so called "Large Employers")¹ to determine if they are going to provide health coverage to their employees that satisfies the requirements of the ACA or if they are not going to offer such health care coverage and to instead pay a penalty.²

Determining Large Employer Status

The determination of whether an employer is a Large Employer is determined on a controlled group basis, meaning that the employees of related entities as defined under section 414(b), (c) and (m)

of the Internal Revenue Code of 1986, as amended (the "Code") (referred to as a "Controlled Group") are combined. Thus, four related entities who are members of the same Controlled Group who only employ 20 full-time employees each will be a Large Employer for purposes of ACA.

A full-time employee for purposes of the ACA means an employee who is regularly works 30 or more hours a week. However, for purposes of determining Large Employer status, part-time employees are converted into full-time equivalent employees. This means an employer cannot evade application of the employer mandate by only employing part-time employees.



Health Coverage Required to be Offered by Large Employers

If an employer is determined to be a Large Employer, then it is required to make an offer of minimum essential health coverage ("MEC") under a group health plan to substantially all of its full time employees³ (70% for 2015 and 95% for 2016 and after) and their dependents⁴ or pay a penalty.⁵ Most employer group health coverage constitutes MEC. However, for purposes of the employer mandate, such coverage must satisfy two requirements:

- (i) it must be affordable (*i.e.*, single coverage cannot cost more than 9.5% of the employee's household income), and
- (ii) it must satisfy minimum value ("MV") (*i.e.*, the plan must pay 60% of the cost of the coverage, meaning employees pay 40% of the cost of coverage through deductibles, co-pays and coinsurance).

There are various safe harbors that may be used by an employer to determine if coverage is affordable. One of these safe harbors, the Federal Poverty Line Safe Harbor, is perhaps the easiest because it doesn't require an employer to know an employee's actual household income. Under that safe harbor employer coverage will be affordable if the employee's annual contribution for single coverage does not exceed 9.5% of the federal poverty level for a single individual. For 2014, the federal

poverty level is \$11,670, which means an employee's annual contribution for health plan premiums cannot exceed \$1,108.65.

Whether coverage satisfies the MV requirements can be determined by using a minimum value calculator published by the Centers for Medicare and Medicaid Services, using an established safe harbor or obtaining an actuarial certification.

In addition to providing MV, the ACA requires employer provided group health coverage to include the following features: (i) it must cover preventive services without cost sharing (*i.e.*, no deductibles, co-pays, co-insurance and other cost sharing), (ii) it may not impose any annual or lifetime limits on essential health coverage, (iii) it must not impose any pre-existing condition limits, (iii) coverage for dependent children must continue until age 26, regardless of student status, (iv) it must satisfy specific cost sharing limitations which limit the out-of-pocket costs of employees (*i.e.*, \$6,600 for single coverage and \$13,200 for other than self coverage for 2015)⁶ and, in the case of an insured plan, limit the maximum deductible that may be imposed, and (v) it may not impose a waiting period in excess of 90 days.

Potential Penalties

Penalties arise under the pay or play rules when at least one full-time employee is certified as having received a subsidy (premium tax credit or cost sharing reduc-

tion) when purchasing individual health insurance through the public market place (*i.e.*, the state or federal exchanges (the "Exchange")).⁷ If the employee does not obtain a subsidy, then the employer cannot be penalized. Subsidies are available to an employee whose household income is between 100% and 400% of the federal poverty limit.⁸ This would include an employee with a family of four with family income up to \$94,000. Notably, the penalties are determined separately for each entity who is a member of a Controlled Group based on the coverage it provides and its full-time employees.

Outstanding Issue: Currently, there is an open issue of whether employers who operate in a state that does not have its own Exchange, such as Texas, may be subject to the employer mandate penalty under the theory that only employees who reside in a state that has adopted an Exchange can be eligible for a subsidy. This was the conclusion by the U.S. Court of Appeals for the District of Columbia in a recent decision. However, in a similar case decided on the same day, the Fourth Circuit Court of Appeals ruled to the contrary upholding the eligibility of employees who participate in a federal Exchange to receive a subsidy under the ACA. Until the conflict is resolved by the Supreme Court or otherwise, employers outside the jurisdiction of the D.C. Circuit should assume that they have to pay or play regardless of whether their state operates its own Exchange.

There are two types of penalties that may be imposed on a Large Employer under the employer mandate.

Failure to Offer Coverage Penalty: The failure to offer coverage penalty applies when the employer does not offer MEC to at least 70% (for 2015) or 95% (for years after 2015) of its full-time employees and at least one full-time employee obtains subsidized coverage under the Exchange. The amount of this penalty equals:

$$\$2,000/12 \times (\text{number of FT employees} - X^*)$$

* For 2015, "X" equals 80. For future years "X" equals 30. X is pro rated among related entities in a Controlled

Group based on the size of their employee base

The failure to offer coverage penalty is calculated separately for each month coverage is not offered to the employer's full-time employees. The penalty is not deductible.

Example: An employer that has 530 full-time employees and who in 2016 fails to offer coverage to 28 of those employees will pay annual penalty of \$1 million ($\$2,000 \times (530-30)$)

Coverage Offered Penalty: The second penalty, referred to as the coverage offered penalty, applies when the employer offers MEC to at least 70% for 2015 (95% for future years) of its full-time employees and at least one full-time employee obtains subsidized coverage under the Exchange. The amount of this penalty, calculated on a monthly basis, equals:

$\$3,000/12 \times$ full-time employees obtaining subsidized coverage **OR** Failure to Offer Coverage Penalty, if less

Example: If the above employer that has 530 full-time employees in 2016 fails to offer coverage to 515 of those employees but 10 obtain a subsidy under the Exchange will pay annual penalty of \$ 30,000 ($\$3,000 \times 10$)

The key difference between the two penalties is that the coverage offered penalty is based solely on the number of employees who obtain subsidized coverage under the Exchange (as opposed to all of the employer's full-time employees).

Significantly, subsidized coverage is only available under the Exchange if the employer failed to offer MEC to the employee, the coverage is not affordable, the coverage does not satisfy MV or the employee's household income is between 100% and 400% of the federal poverty limit. Accordingly, by offering ACA compliant coverage to all or the majority of its full-time employees an employer can

effectively avoid or minimize its penalties under pay or play.

Action Steps

In order to determine whether and how to comply with the employer mandate, Large Employers should evaluate the changes that may need to be made to their employer group health plan. Specifically,

- The waiting period, does it need to be shortened?
- The eligibility provisions, do they need to be changed?
- The premium cost, is it affordable at all income levels?
- The benefits offered, do they satisfy minimum value?

The Large Employer should also prepare a financial analysis of the impact of being compliant versus non compliant with the employer mandate, considering both the failure to offer coverage penalty and the coverage offered penalty. The financial ramifications of paying or playing, coupled with the associated employee relations impact of either scenario, will then need to be evaluated by the employer to determine the appropriate course of action for 2015 and later.



Felicia Finston is an attorney with Finston Wilkins Law Group LLP in Dallas.

Notes

1. A Large Employer includes for profit entities, tax-exempt entities and government employers, including colleges and schools.

2. here are transition rules in effect for 2014 through 2016 for determining if an employer is a Large Employer. For 2014, a Large Employer is one with at least 50 but fewer than 100 full-time and full-time equivalent (collectively "FTEs") for the preceding calendar year or for at least six consecutive months of 2014 to determine Large Employer status in 2015. In 2015, the definition changes to employers with 100 or more FTEs for the calendar year and in 2015 it changes to employers with 50 to 99 FTEs for the calendar year. Mid-size employers with an average of 50 to 99 FTEs will not be subject to the pay or play penalty until 2016 if the employer does not reduce its work force between February 9, 2014 to December 31, 2014 to qualify for this transition relief or eliminate or materially reduce any health coverage it offered as of February 9, 2014 for the period beginning on that date through December 31, 2015 and it certifies these facts to the Internal Revenue Service.

3. Coverage does not need to be offered to full-time equivalent employees.

4. For this purpose, a dependent does not include spouses. Although as a practical matter, most employers will offer spousal coverage.

5. Employers with non-calendar year plans must begin compliance with the employer mandate at the start of their plan year, rather than January 1 if certain transition rules are satisfied.

6. Different limits apply to high deductible health plans ("HDHPs"). For 2015 the limit is \$6,450 for self-only HDHP coverage and \$12,900 for family HDHP coverage.

7. Enforcement of the mandate will be achieved by requiring employers to report to the Internal Revenue Service the types of health care plans they offer to full-time employees and to provide compensation statements to their employees to assist the employees in determining whether they qualify for a subsidy under the Exchanges.

8. Different safe harbors may be used for different classifications of employees, so long as the classifications are reasonable and the safe harbor is applied consistently.

Practical Tips for Mediation

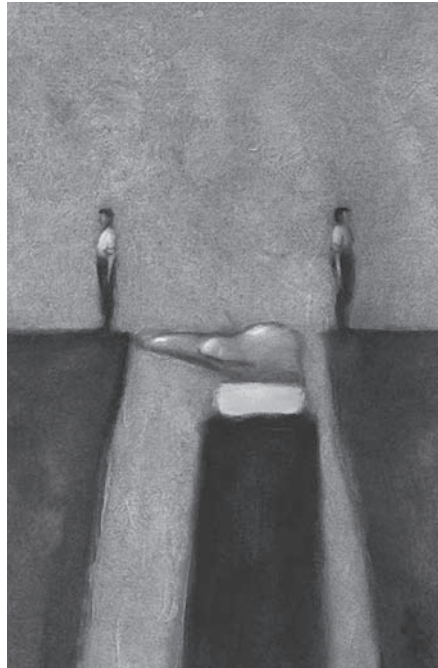
By G.R. "Randy" Akin

In this day and age, most attorneys and their legal assistants have participated in hundreds, if not thousands, of mediations. Their viewpoint of the process, however, is usually one-sided. The following article will share helpful hints from my viewpoint. I have seen the mediation process from the viewpoint of the plaintiff, the defendant, and the mediator, in over two thousand mediations.

Mediation is defined as a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.¹ The mediator has no stake in the outcome of the case and is completely neutral. Any person may serve as a mediator who has been ordered by the court or approved by the parties.² The mediator does not necessarily have to be an attorney or even have received training as a mediator, but it is wise to use someone who has both training and experience.³ The mediator's fee is a taxable cost of court.⁴

The concept of mediation was believed to be developed in ancient Greece to solve disputes through diplomacy rather than the sword.⁵ The Greek term for "mediate" or "mediator" is used six times in the bible.⁶ In 1 Timothy 2:5, it states: "For there is one God and one mediator between God and men, the man Christ Jesus."⁷ Since 1 Timothy was written in 63 A.D., the concept of mediation has been around at least 2,000 years based on writings in the Bible, if nothing else.⁸ In Texas, however, mediation, along with other alternative dispute resolutions (ADR), was created by statute effective June 20, 1987.⁹ Most of the essential provisions in the ADR statute have remained virtually unchanged.

The court in which the case is pending has the power to order parties to mediate the case.¹⁰ Any party, within 10 days after receiving the order from the court referring the case to mediation, may file a writ-



ten objection to such an order.¹¹ If the court finds there is a reasonable basis for an objection to mediating the case, it can withdraw its order.¹² There is a different rule for a case where the monetary relief being sought is \$100,000 or less. This type of case is considered an expedited cause of action and is governed by a separate rule. In that event, the parties to the litigation can agree to not mediate the case, and the court does not have the power to order them to mediation.¹³

The first thing which occurs in the mediation process is choosing the mediator. Most often, the attorneys choose a mutually agreeable mediator. The second part of the process is to schedule a time and venue for the mediation. I have found that a neutral venue, such as the mediator's office, is the preferable venue for most mediations. In my mediation practice, I prefer to conduct mediations in my office. It has numerous comfortable conference rooms, multiple kitchens, a Wi-Fi connection, and equipment for presentations. The majority of long-time mediators have similar facilities.

Prior to the mediation, most mediators send the parties a package containing several items. This package generally contains such things as confirmation of the date, time and venue of the mediation, the fee invoice, a W-9, Rules of Mediation, Agreement to Mediate form, and a Confidential Information Sheet (CIS) form. These items help to insure that all parties involved are well informed and that the mediation runs smoothly from start to finish.

The mediator wants to know about the case before the date of the mediation and preferably sooner than the night before. When filling in the CIS, do not attach pleadings, depositions or other discovery documents, medical records, or motions and responses to motions. When I receive such packages, my first reaction is that the attorney does not care much about the mediation. It is easy for an attorney to tell his assistant to run copies of those kinds of documents and ship them to the mediator and then move on to something more important. Some mediators have a policy to disregard a big pile of documents. The preferable practice is to summarize the case, and its important points, into a short narrative not to exceed a couple of pages. Supporting documentation is not necessary as the mediator does not make any evidentiary rulings. A short, well-written summary will be read by the mediator and will be the most helpful tool for the mediation. Be sure and tell the mediator strengths and weaknesses of the case, the personality of the client or representative, the history of negotiations, and anything else which may help the mediator evaluate the best method to facilitate settlement. Furthermore, be sure and tell the mediator who will be attending the mediation and in what capacity that person will be attending. In my practice, if for no other reason, I need to know how many people are attending in order to provide lunch for everyone.

On the day of the mediation, the process will start with the introduction of the parties, attorneys, and representatives. Afterwards, the mediator will state the ground rules and anticipated agenda for the mediation. At the discretion of the parties and the mediator, opening

statements may be given to allow each side an opportunity to state its case. I start all of my mediations with a four minute PowerPoint presentation. In the PowerPoint, I explain mediation and the mediation process to those present. I stress that all matters during the mediation will remain confidential.¹⁴ I also use what I labeled as the *Five C's of Mediation*®, which I enforce at all of the mediations I conduct. They are as follows:

Courtesy: I always demand that the parties and their attorneys be courteous to one another. Mediation is a time for resolution not confrontation. It is not a time for people to beat their chests, but it is simply a time for each side to fully explore the strengths and weaknesses of the case.

Comfort: I never shine a bright light in anyone's face and force them to settle. I want the mediation process to work and for that to happen I demand comfortable surroundings. People who mediate in my office are treated with a courteous and professional staff, coffee and refreshments and a comfortable mediation facility. If a person wants to be uncomfortable in the litigation process then that person needs to go sit on a hard bench in the courtroom for days or weeks trying his or her lawsuit in front of twelve strangers and a judge.

Commitment: Most judges put language in the standing mediation order bestowing certain powers on the mediator. One of the powers I normally possess is the ability to keep the parties and the attorneys in the mediation process until I settle, abate, or impasse the case. I tell my participants that I do not turn into a pumpkin at any given hour, and that I expect commitment from them to take the time needed for the mediation process to be successful.

Compromise: If any party to a mediation wants to win its case

during the mediation session, then that party is in the wrong place. To win (or lose) the case, it needs to go to the courthouse. If a party wants to avoid the uncertainty of a trial on the merits, which is statistically accomplished approximately 97% of the time, then it occurs through compromise.¹⁵ All sides to a dispute have to be willing to compromise in order to reach a settlement.

Control: When litigants submit their case to a jury of strangers, they lose control over the resolution of their case. Juries are unpredictable because it is impossible to know enough about each individual juror during the voir dire process to effectively strike a potentially dangerous juror. Some jurors have hidden agendas which are difficult to detect. At the mediation, a litigant has total control on the outcome of the case, with certainty of its resolution.

During the mediation, there are two things which are expressly prohibited. First, there is no stenographic record of the mediation process, and no person shall tape record any portion of the mediation session. Secondly, no subpoenas, summons, complaints, citations, writs or other process may be served upon any person at the site of a mediation session upon any person entering, attending or leaving that session.¹⁶

Settling a case during a mediation is much easier if both parties come in with a negotiation strategy. If a party has a strategy, then it does not have to be reactionary to what the other side is doing. One of the worst strategies I see parties use during the mediation is that of matching the other side. There are usually two reasons for that negotiation strategy. The first reason, which is rare, is that the party wants to reach the mid-point number. By matching the other side on each counter, the party is working toward a number in between the high and low numbers of the demands and offers. The second reason a party matches each counter during a mediation is that the party does not have any negotiation strategy whatsoever. I find that

this type of negotiation is usually a waste of time and effort, and it is a lazy way to negotiate.

There can be many things that an attorney or a party can do which will sabotage a mediation. I have narrowed them down to the five biggest reasons, in my experience, which make resolution at a mediation unsuccessful. I call them the five *Mediation Killers*. They are as follows:

Wrong Direction: If a party wants a mediation not to succeed, it can simply move the wrong way with the demands and offers. Once a Plaintiff heads North or a Defendant heads South, one can rest assured that the mediation probably will not be successful.

Authority: I have always said that the "check writers" and "check endorsers" should be at a mediation, or somebody with full authority on their behalf. Sometimes lawyers call or write me and ask if their client or insurance representative can "be available by phone." What that really means is that the client or claims representative is not going to experience the mediation process, and the case will likely not settle. The mediation process has a purpose. That purpose is lost if the people are not present.

New Information: I have been in mediations where one side or another pops up an expert report, new medical bills, or other new information at the time of the mediation. The new information cannot be evaluated during the short time of a mediation, and thus, the mediation is unsuccessful. If there is documentation or evidence which will have a significant bearing on the outcome of a lawsuit, it needs to be provided well ahead of the mediation so that all sides can evaluate it properly and be prepared to consider the information towards the value of the case.

Lack of Information: I am always

disappointed when I conduct a mediation and the parties or representatives at the mediation do not have pertinent and crucial information available to consider. Elementary considerations such as prognosis, total medical bills, total lost wages, court costs, future cost considerations, and litigation expenses are a few examples of information needed at a typical mediation which I conduct. The bottom line is for a party to be prepared with the relevant information when attending a mediation.

Disputed Unresolved Discovery. Whenever there is a key witness who has not been deposed, or key documentation which has not been obtained, I inevitably see the parties or attorneys on opposite sides giving me radically different interpretations of that anticipated testimony or evidence. It is many times a fatal hindrance to the successful resolution of a dispute during mediation.

A party should go ahead and spend the time and money developing key evidence before spending the time and money to mediate.

Mediation is a time-honored method of alternative dispute resolution. When the parties attend prepared to negotiate in good faith, more often than not, a settlement will be reached. While mediation may not be appropriate for every case, it is an efficient and effective tool for those cases in which an amicable settlement is possible. When parties utilize the skills of a trusted and competent mediator, attend the mediation with an open mind, and follow the tips outlined above, resolution is the likely outcome.

G.R. "Randy" Akin is an attorney-mediator in Longview. He is Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization and further Board Certified as a Civil Trial Advocate by the National Board of Trial Advocacy and the American Board of Trial Advocates.

Notes

1. 6154.023(a) Texas Civil Practice & Remedies Code
2. Local Rules for the United States District Court in and for the Eastern District of Texas; Appendix H—Court-Annexed Mediation Plan (as amended Nov. 19, 2007)
3. 6154.052(c) Texas Civil Practice & Remedies Code
4. 6154.054(b) Texas Civil Practice & Remedies Code
5. "A Short History of Mediation/CFR Mediation Services" www.CFRmediation.com 2009-03-29
6. The Bible (NIV): Galatians 3:19; Galatians 3:20; 1st Timothy 2:5; Hebrews 8:6; Hebrews 9:15; and, Hebrews 12:24
7. The Bible (NIV)
8. Ehrman, Bart. The New Testament: A Historical Introduction to the Early Christian Writings. Oxford University Press. 2003
9. Chapter 154 Texas Civil Practice & Remedies Code
10. 6154.022(a) Texas Civil Practice & Remedies Code
11. 6154.022(b) Texas Civil Practice & Remedies Code
12. 6154.022(c) Texas Civil Practice & Remedies Code
13. Rule 169(d)(4) Texas Rules of Civil Procedure
14. Rule 408 Texas Rules of Civil Evidence;
15. 6154.053(c) Texas Civil Practice & Remedies Code
15. Court Review: The Journal of the American Judges Association, 42:3-4 (2006), pp. 34-39
16. "Rules for Mediation" 13, 14; Drafted by the American Arbitration Association and adopted by the Association of Attorney-Mediators through its founder, Steve Brutsche'

Elder Law

by Karen Telschow Johnson

What is elder law and why should I care? I'm not old, not eligible for AARP, so why is it important? It is important because we all age. We all hope to get older and as we do, our parents do, our friends do and our population gets older every day.

Generally speaking, Elder Law is a field of law that relates to those 65 years and above. Let's begin with the most common question I am asked on an almost daily basis: HOW do I keep the family home?

The story begins like this: An aging parent falls and breaks a hip. Surgery, ongoing physical therapy, the need for home health care or a nursing home, and



the consideration of a rehabilitation facility, precipitate that very important question regarding the family home. In order to provide for these services, the question then becomes who will you use to provide them? Can you afford to pay for private home health care, or a nursing home, or

will you need to apply for Medicaid for these services once Medicare benefits run out? If Medicaid is needed, Medicaid has the legal right to be paid for services rendered by the estate of someone who has received services paid for by Medicaid.

The client then wants to know that if they apply for Medicaid, can Medicaid take their home and if so, how can that be prevented?

The law governing whether Medicaid has the right to take the family home is known as the Medicaid Estate Recovery Program, "MERP." The Texas Medicaid Estate Recovery Program is the governmental agency responsible for the administration of the program. MERP is a part of the Texas Department of Aging and Disability Services (DADS). MERP contracts with Health Management Systems, Inc. and is in charge of collecting MERP claims.

Now that you know who the players are, Texas MERP does not allow for a lien

to be placed upon your home for the payment of Medicaid rendered services. To be clear, there is NO LIEN allowed on your home for the reimbursement of Medicaid services in Texas. This program only allows the state to file a claim in a probate proceeding against the estate of a deceased person who received Medicaid benefits. Claims in probate court are paid according to a classification system governed by the Texas Estates Code, formerly known as the Texas Probate Code. In Texas, a MERP claim is considered a class 7 claim and is only paid after funeral bills, administration expenses and others based on class priority.

The State will typically not file a claim

in the following instances: estates valued less than \$10,000.00, Medicaid costs were less than \$3,000.00, and if the cost of the sale of the property is greater than its value.

For your family, it is important to know that the state will not file a claim for Medicaid reimbursement when there is a surviving spouse, there is a surviving child under 21 years of age, there is a child who is blind or totally disabled, or where there is an unmarried child living in the Medicaid recipient's homestead for at least one year prior to the death. The state also allows a hardship waiver to be filed in certain situations.

When faced with a very real scenario

such as the one discussed above, do not be overwhelmed. There are estate planning options that can further provide you and your family protection when considering what assets should be used when these types of events occur. From what's known as a Lady Bird Deed to a Revocable Trust, these legal tools are also to be considered when determining how to provide for your family member without depleting all of the family assets. For more information on services that Texas can offer you and your family, please see www.dads.state.tx.us/services.

Karen Telschow Johnson is licensed to practice law in Texas and New York. She is in private practice in Fort Worth.

Professional Development: What Is It and Why Is It Important?

By Deborah Andreacchi, TBLS-BCP

The phrase "professional development" has become quite the buzz phrase. Everywhere you go and everything you read relies heavily on professional development as key to your professional life as a paralegal. But, what exactly is professional development and why is it so important to us as paralegals?

Everyone recognizes that continuing legal education is a major component of professional development. We must remain knowledgeable regarding the ever changing legal environment in which we work. Has the legislature enacted new laws that will affect how our attorneys practice? Have federal or state regulators changed procedures or added new regulations that we are required to follow? Have the courts changed federal, state or local rules for practice? How have procedures and/or deadlines changed? Are there new forms we are required to use? All of this is critical to a paralegal performing at the top of his



or her game. These are the areas where our attorneys focus and rely on us to have them completely prepared. The more continuing legal education we obtain, the better we are able to perform.

However, I submit that continuing legal education is not the only area that will enhance our professional development. If we are to be successful and continue to promote our profession, we must look to other areas of development as well.

Every paralegal needs to consider obtaining an advanced certification. It

could be a general certification or it could be specific to the area of law where you work most frequently. The choice of certification is personal and should be each individual's choice based on their particular work environment and personal goals. Certification forces us to reevaluate the goals and objectives of our professional life. Do I need a general certification so I am marketable in more than one area of law or do I want to specialize in a particular area of law? Certification provides additional opportunity for learning and growth. We sometimes become focused on very narrow areas of knowledge that allow us to perform our duties better, but, unfortunately, leave us lacking in other areas. Studying for a certification test broadens that focus. And, equally important, it sends a message to attorneys, judges and other practitioners that we are professionals and serious about advancing our careers. It opens additional opportunities and responsibilities in our

work and provides us with a sense of accomplishment and pride in what we do.

Another area that promotes professional development is *pro bono* and/or community service work. Working at a *pro bono* clinic may expose us to a new area of law and could light a fire in us to pursue that area of law further. It could change the course of our career or solidify our choice of law or type of practice. Assisting at a *pro bono* clinic gives us an added sense of confidence in what we do and how we handle ourselves in new situations. Helping someone in need provides a sense of accomplishment which translates into a better overall attitude concerning what we do every day. Not to mention that helping someone in need just feels good—it helps us as much as the person we are assisting. *Pro bono* and community service work help promote our profession as well. People outside the legal community may have a negative view of attorneys and anyone who

works with them. Our friendly faces and helpful manner may provide people with limited contact with our profession an opportunity to view the legal community in a new, more positive way.

Membership in national, state and local paralegal associations is another way to further our professional development. Attendance at regular meetings, most of which supply CLE, provides not just an opportunity to socialize, but a sense of belonging. We find that others are struggling with the same issues and we can share ideas for solutions to problems we all face. Membership in an association exposes us to paralegals from different walks of life. Paralegals that work for sole practitioners, small firms, large firms and in-house corporate paralegals come together to share ideas and concerns about the profession. Volunteering to serve on a committee or taking on a leadership role, either as a committee chair, a district chair,

president of a local association or a board member of the PD, provides opportunities to stretch ourselves and step outside our normal comfort zones. Learning leadership skills makes us stronger and more confident when dealing with attorneys, clients and co-workers.

Professional development is not just about obtaining continuing legal education. It's about growing, both personally and professionally. It's about never giving up and being satisfied with the status quo. It's about constantly searching and stretching and challenging ourselves to better.

Deborah Andreacchi, TBLS-BCP is the Chairperson of the Professional Development Committee of the Paralegal Division and works at Cox Smith Matthews Incorporated in Dallas.



CP
CERTIFIED PARALEGAL

ACCREDITED

Certified Paralegal Program Receives Accreditation from the National Commission for Certifying Agencies (NCCA)

On April 30, 2014, The National Commission for Certifying Agencies (NCCA) granted accreditation to the NALA Certified Paralegal program for demonstrating compliance with the NCCA Standards for the Accreditation of Certification Programs.

NCCA is the accrediting body of the Institute for Credentialing Excellence. The NCCA Standards were created to ensure certification programs adhere to modern standards of practice for the certification industry.

The NALA Certified Paralegal program joins an elite group of more than 120 organizations representing over 270 certification programs that have received and maintained NCCA accreditation.

More information on the NCCA is available online at www.credentialingexcellence.org/NCCA.

Information describing the Certified Paralegal program is available at www.nala.org/certification.aspx.



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Scruples

Ethics of Non-Attorney Officers or Principals and Non-Attorney Bonuses Based on Revenue or Profit

Ellen Lockwood, ACP, RP

The Professional Ethics Committee of the State Bar of Texas recently issued Opinion No. 642 which addresses two issues that are relevant to paralegals. The opinion was issued in May 2014 and published in the July 2014 edition of the *Texas Bar Journal*.

The first issue addressed by the opinion is whether non-attorneys may hold titles such as “officer” or “principal” in a firm. The Committee noted that under the Texas Disciplinary Rules of Professional Conduct, Texas attorneys are not permitted to grant ownership or controlling interest in law firms to non-attorneys and that the assignment of titles such as “chief executive officer” and “chief technology officer” would make it appear that those people have significant control over the firm and its operations.

The Committee cited the following rules as being significant:

- Rule 5.04(a)—attorneys may not share or promise to share fees with a non-attorney
- Rule 5.04(d)(2)—attorneys may not practice law if a non-attorney is a corporate director or officer of the law firm
- Rule 5.04(d)(3)—attorneys may not practice law if a non-attorney “has the right to direct or control the professional judgment of a lawyer”
- Rule 5.04(b)—attorneys may not form a partnership with a non-attorney if the

attorney will be practicing law as part of the activities of the partnership

The Committee pointed out that even if non-attorneys would not own an interest in the firm or control the firm’s operations, it would still be misleading to give non-attorneys titles such as those given to officers and principals. Further, the committee notes that identifying someone as an officer or principal who doesn’t have any ownership of the organization, nor control over its activities, would violate the rule which bars attorneys from any activities which involve “dishonesty, fraud, deceit, or misrepresentation.”

The second issue addressed by the opinion is whether a firm may pay bonuses to non-attorneys based on a firm’s profit or revenue. The Committee notes that Rule 5.04(a) prohibits sharing or promising to share fees with a non-attorney. The purpose of this rule is to prevent attorneys from encouraging non-attorneys to practice law or solicit clients.

The Committee notes that any plan or promise to pay bonuses to non-attorneys based on the firm’s profitability may motivate non-attorneys to try to increase the firm’s revenue. If non-attorneys bonuses are directly tied to the firm’s revenue or profits, non-attorneys may be more likely to commit UPL or solicit clients for the attorneys. Non-attorneys may also try to reduce expenses, which could be considered interfering with an attorney’s inde-

pendent judgment in his law practice (see Rule 5.04 (d)(3)).

The opinion also notes that naturally, the award of bonuses depends upon whether the firm has a lucrative year and therefore must review its balance sheet to determine whether to pay bonuses and that there is no ethical prohibition for doing so. The issue would arise only if the firm promised to pay a non-attorney a specific bonus based on a particular level of profitability of the firm.

Although the legal field continues to evolve, non-attorneys are still prohibited from owning or controlling organizations that provide services which include the practice of law, and from being compensated by those organizations based on the organization’s specified profitability benchmarks.



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/paralegaletics. She may be contacted at ethics@txpd.org.

SUSAN WILEN

Recipient of 2013–2014 Paralegal Division Exceptional Pro Bono Service Award.

By Patricia J Giuliano

It was my great pleasure to nominate Susan Wilen for the 2013–2014 Paralegal Division Exceptional Pro Bono Service Award.

Susan has been a formal member of our local pro bono family for at least the past several years. She serves as both volunteer coordinator and active volunteer “worker bee” at all three monthly clinics. In particular, she willingly took on the role as volunteer coordinator for the local Veterans Clinic, even though that clinic takes place on a Friday afternoon. She not only works this clinic every month, she does so knowing that she will likely be the only staff volunteer on hand since Friday afternoons are not conducive to most paralegals leaving their office for volunteer work.

In addition to the Veterans Clinic, Susan can be seen at the monthly wills clinics held at a local law school. She was instrumental in developing procedures for notaries and witnesses at these clinics to be sure proper will ceremonies were conducted in each instance. Even though she is not the volunteer coordinator of these clinics, Susan is viewed by the mentor attorneys as the “go to” person when the wills are ready for execution.

Susan is also a frequent volunteer at the family law clinics held at the offices of the local legal service provider. At these clinics she assists attorneys with revisions to documents and notarization.

In addition to her volunteer services, Susan is currently serving on the fundraising committee of the local pro bono program and is a very vocal advocate



Misti Janes, TBLS-BCP, outgoing President, and Susan Wilen, R.N.

for pro bono service. We know we can always count on her to assist in any capacity to see that quality legal services are available to those without the means to afford an attorney.

Since time was running short at Annual Meeting when Susan received her award, she was unable to share her comments about pro bono service, but I have included them below. In typical form, she is both eloquent and inspirational. Enjoy.

“Many years ago, I came upon a quote from John Wesley that said simply “Do all the good you can, in all the ways you can, as long as ever you can.” I think this counsel has served me well in my personal and my professional life, and it has been a great guidepost, in general.

“I have never sought recognition for anything I have done for others because I get all the gratification I need in the giving of my time, my skills, and my resources. With that said, I am deeply humbled being the recipient of this year’s Exceptional Pro Bono Service Award. It is an honor to be recognized by my peers, but it is even more important that the Paralegal Division recognizes the importance and value of service by its members.

“Working with individuals who have legal needs that wouldn’t be met, but for the time and skill of many others in the legal community, gives me a sense of being part of a larger compassionate community. As one person who has received many blessings in this life, I am grateful that I have found ways to share this bounty with those who may not have been so fortunate.

“More than anything, I hope that this award continues to be an inspiration for others to make our legal world just a little bit kinder, a little bit more peaceful, and a little bit more comforting to those in need of some assistance.”

Congratulations to Susan Wilen, 2013–2014 Paralegal Division Exceptional Pro Bono Service Award Recipient.

Patricia J Giuliano is the Clinic Staff Coordinator for the San Antonio Bar Association, Community Justice Program.

Meet the 2014–2015 Executive Committee of the Paralegal Division

Following is a brief introduction to the current officers of the Division, who took office at this year's Annual Meeting.



BACK ROW LEFT TO RIGHT: Sharon Wornick, CP, Martha Ramirez, TBLS-BCP, Lydia McBrayer, CP, Olga Burkett, Stephanie Sterling, Jay M. Williams, TBLS-BCP, Deirdre Trotter, ACP. FRONT ROW LEFT TO RIGHT: Mona Hart Tucker, ACP; Erica Anderson, ACP; Clara Buckland, CP; Megan Goor, TBLS-BCP and Michelle Beecher.

President

Clara Buckland CP



Clara Buckland has served the Division in several capacities, including District 16 Director, sub-chair on the Professional Development

Committee, Chair of the Membership Committee, NALA liaison, and Liaison for Association of Legal Administrators. She also served on the Division's Executive Committee as Secretary and Parliamentarian, and naturally, as the 2013-2014 President Elect before taking over as President at this year's Annual Meeting.

On the home front, Clara is a member

of the El Paso Paralegal Association and has served on that organization's board in various capacities, including President in 2003, the same year she received the Paralegal of the Year Award. Clara has been a paralegal for 25 years.

Clara is a NALA Certified Paralegal and works as an EEO Legal Investigator and Paralegal in the office of the General Counsel of the El Paso Electric Company (EPEC). Prior to her move to EPEC, Clara worked with her mentor, Michael D. McQueen, managing partner, at Kemp Smith LLP, in the area of Labor and Employment Law for 17 years, and with former Associate Judge, Kathleen C. Anderson, in the area of Family Law, for five years.

Clara received her degree in Paralegal Studies from El Paso Community College and has served on the college's Advisory Board for the Paralegal Program.

One of Clara's goals as President is to seek ways by which the PD can assist and empower paralegals to work on themselves

and as a result, make believers of their supervising attorneys and clients in the paralegal profession. Clara believes that it is through this channel that each paralegal help can grow the profession and the Paralegal Division.

President-Elect

Erica Anderson, ACP



Erica Anderson began her career as a file clerk and worked diligently to become the lead paralegal on several matters. In January 2006, she earned her Certified Paralegal status from NALA, and in 2009, received notice

that she had achieved the designation of Advanced Certified Paralegal in Trial Practice. In 2010, Erica was invited to be a CLE speaker at TAPS and continues to speak to other audiences.

A member of the Paralegal Division since 2004, she served as Membership Chair for three terms prior to being elected as District 7 Director (2008–2011). She has served in several different positions to the Texas Panhandle Paralegal Association, including Public Relations Chair, Professional Development Chair, TAPA Chair and President. With her memberships in these associations and in NALA, Erica is able to participate in a variety of ways to help develop the paralegal profession. Most recently, Erica was invited to join the Advisory Committee to Amarillo College's Paralegal Studies program.

After working as a senior litigation paralegal with the law firm of Mullin Hoard & Brown, LLP, Erica is employed by Physicians Surgical Hospitals, LLC, in Amarillo, Texas, and focuses on compliance and regulatory matters.

Erica and her husband, Rich, are raising two children, Rich and Libby.

Treasurer

Mona Hart Tucker, ACP



Mona Hart Tucker serves the Division as Treasurer and as Director of District 14. Her legal experience runs the gamut from transactional

real estate to class action securities litigation. Mona is also a mentor in the Division's Mentor Program, and serves as Board Advisor for the Publications and District CLE Standing Committees, the e-Group Policy and State Bar College Membership Application Review Ad Hoc Committees, as well as Liaison to Texas Lawyers for Texas Veterans.

This year marks Mona's eighth year as

a Director. She previously served two two-year terms in District 14, and then came back on the Board in 2012.

Mona has been instrumental in organizing Wills for Heroes clinics in the northeast Texas area, held in a different location each November. Veterans and their spouses come to these pro bono events to have their wills, powers of attorney, and directives to physicians prepared by volunteer attorney-paralegal teams.

Mona has three living children and two stepchildren. Between them, Mona and her husband, Lonnie, have 18 grandchildren and two great-grands. In her spare time, Mona loves doing genealogy work. Life is good in District 14.

Secretary

and District 12 Director

Michelle Beecher



Michelle Beecher graduated from LSU with a B.A. in Communications. In 1992, Michelle received her certificate in Paralegal Studies from the University

of North Texas—PDI.

Michelle joined the Paralegal Division in 1990. In 1992, Michelle was elected as the District 12 Director and served one year before resigning due to a family health issue.

Michelle is a charter member of the Greater Denton Legal Assistants Association. She is currently CLE Chair of the Denton County Paralegal Association. In 2013 she was the Fundraising Chair for the Denton County Paralegal Association and in 2010–211 was the Association's CLE Chair. In 2013 and 2014, she served on the Denton County Bar Association's Wills for Heroes Committee and this year is serving on the Denton County Bar Association's Courthouse Appreciation Day Committee.

Michelle is the Treasurer for the

Tarrant Tiger Alumni Association (LSU) and a member of the Cross Timbers Chapter of the Daughter's of the American Revolution. Michelle is the French Specialist for the Spanish Task Force Committee for National Daughters of the American Revolution and serves on the Project Patriot Committee for the Cross Timbers Chapter. Michelle is also a member of the Denton Benefit League and serves on their Bylaws Committee, Chair of the Copy Committee, and served as a Team Leader for the DBL Jazz Festival Committee.

Michelle has been married to Raymond Beecher for 30 years and they have two children: daughter Amy is pursuing her master's degree in Health Administration at LSU and son Raymond, Jr. is a member of the Coast Guard stationed in Puerto Rico.

Parliamentarian

and District 3 Director

Megan Goor, TBLS-BCP



Megan Goor was elected as the Paralegal Division Director of the State Bar of Texas for District 3 in 2013 after her appointment in November 2012. Megan

is the Senior Paralegal and Office Manager at The Brender Law Firm, located in the medical district of Fort Worth. She has been employed with Art Brender since 1983, after starting her career in the legal field as a legal secretary in 1982 for another law firm. Megan graduated from Southwest High School in 1983 and while working for Art Brender, obtained her B.A. from the University of Texas at Arlington. She is a board certified paralegal in Personal Injury Trial Law by the Texas Board of Legal Specialization. She is also serving this year as the Board Advisor for the PD's Pro Bono Committee and Liaison to the Texas Young Lawyers. She is a former Board Advisor-Annual

Committee; former Board Advisor-Vendor Liaison; and former Liaison to ABA. She is the Fort Worth Paralegal Association's Professional Development Chair and Liaison to the PD. In addition, she is a Paralegal Affiliate Member of AAJ; a member of The College of the State Bar of Texas; and a member of the Tarrant

County Bar Association.

Megan served as Advancement Chair and Committee Member of Boy Scouts of America, Cub Scouts, Pack 9 (2008–2013) and as committee member on the Vision Committee 2013 of St. Paul Lutheran Church.

Michelle Beecher is a paralegal and

office manager with the law firm of Alagood & Cartwright, P.C., located in Denton, Texas and has been with the firm for the past 10 years. Michelle has over 20 years experience in the legal field and practices in the area of real estate and civil litigation.

Annual Meeting Luncheon

The Paralegal Express: Your Train To Success

Friday, June 27, 2014, Dallas, Texas

The Paralegal Division held its 2014 Annual Meeting in Fort Worth, TX on June 27, 2014 at The Fort Worth Club. Misti Janes, 2013–2014 President of the Paralegal Division, presided over the meeting. President Janes introduced the 2014 Annual Meeting Committee and the 2013–2014 Board of Directors.

Keynote speaker Lyn Robbins was introduced by Julie Sherman, Annual Meeting Chair. Mr. Robbins is Senior General Attorney for BNSF Railway Company (The name has changed). Mr. Robbins is the senior in-house counsel primarily responsible for BNSF personal injury claims litigation—focusing on FELA, crossing accident, derailment, and pedestrian cases—along with appellate work, major damage collection litigation, and commercial dispute resolution. Mr. Robbins' presentation focused on what in-house counsel like himself look for and expect from outside counsel paralegals. Mr. Robbins also discussed what he looks for when hiring in-house paralegals such as education, certification and the ability to stay current by association with state and local paralegal associations.

The 2013–2014 President's Report was presented by President Misti Janes, TBLS. President Janes stated that the Division is strong and that the Paralegal continues to lead our profession in Texas and throughout the nation. She further stated that the Division has continued to focus on CLE, Pro Bono activities, charity events, and professionalism. Since June 2013, the

Pamela Snavelly, ACP, Linda Gonzales, CP, and Kristina Kennedy, TBLS-BCP



Janice Piggott, Julie Sherman, TBLS-BCP, Misti Janes, TBLS-BCP, Star Moore, CP, and Katrine Lea



Division offered approximately 44 hours of CLE, with an additional 15 hours provided at the 2013 Texas Advanced Paralegal Seminar (TAPS). There were also 21 new legal CLE topics taped that are available online.

President Janes reported that this year marks the 20th anniversary of Paralegals being allowed to take the examination to become Board Certified by the Texas Board of Legal Specialization. Additionally, The Paralegal Division unveiled a Helpful Hints Guide this year with test taking tips related to the TBLS examination.

President Janes reported that the Paralegal Division is developing a PD App. The App will give members the availability to read the TPJ on your phone or tablet, as well as keep track of your CLE hours.

President Janes presented the 2013–2014 Exceptional Pro Bono Service Award to Susan Wilen, R.N. of San Antonio. Ms. Wilen works for the San Antonio law firm of Brin & Brin. Ms. Wilen Susan has devoted many hours of pro bono service as volunteer coordinator and active volunteer at the San Antonio Veterans Clinic, monthly wills clinics held at a local San Antonio law school, and a frequent volunteer at the San Antonio family law clinics. Ms. Wilen and her pro bono service are featured in an article on page ____.

During the Annual Meeting, the Paralegal Division's Outstanding Committee Chair Award was presented to Susan Wilen, R.N., Chair of the TAPS 2012 and TAPS 2013 Planning Committee.

The Special Recognition Award was presented to Javan Johnson, TBLS-BCP,



Lyn Robbins

for her outstanding service to the Paralegal Division as the TBLS Helpful Hints Guide Chair.”

The outgoing 2013–2014 Directors were presented with plaques for their service as a District Director. These directors are Mariela Cawthon, CP, TBLS-BCP, District 2 (Dallas), Kristina Kennedy, ACP, TBLS-



President Clara Luna Buckland, CP and Outgoing President Misti Janes, TBLS-BCP

BCP District 4 (Austin), Pamela Snively, ACP, District 12 (Denton), and Linda Gonzales, CP, District 16 (El Paso)

At the end of the Annual Meeting, the new incoming 2014–2015 Paralegal Division officers and directors were installed.

The Paralegal Division would like to express its sincere thanks to the sponsors of the 2014 Annual Meeting as listed below:

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Outgoing President Misti Janes, TBLS-BCP and Susan Wilen R.N.



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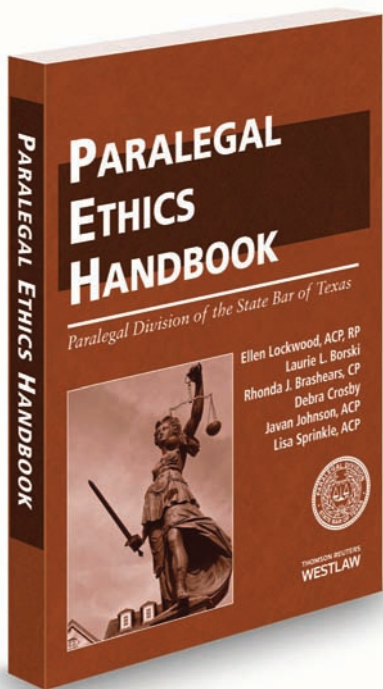
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PARALEGAL ETHICS HANDBOOK

By: Ellen Lockwood, Et Al

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

Paralegal Ethics Handbook discusses topics such as defining ethics and ethical obligations and remaining ethical, and addresses ethical considerations for in-house, corporate, freelance, administrative, governmental, and regulatory law paralegals as well as paralegals working in the area of alternative dispute resolution. It also covers specific ethical considerations in 17 practice areas and provides resources for state information and paralegal association ethics canons and related information.

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