

FALL 2016 VOL. 22 NO.2

# *Texas Paralegal Journal*



## Separate Property in a Divorce





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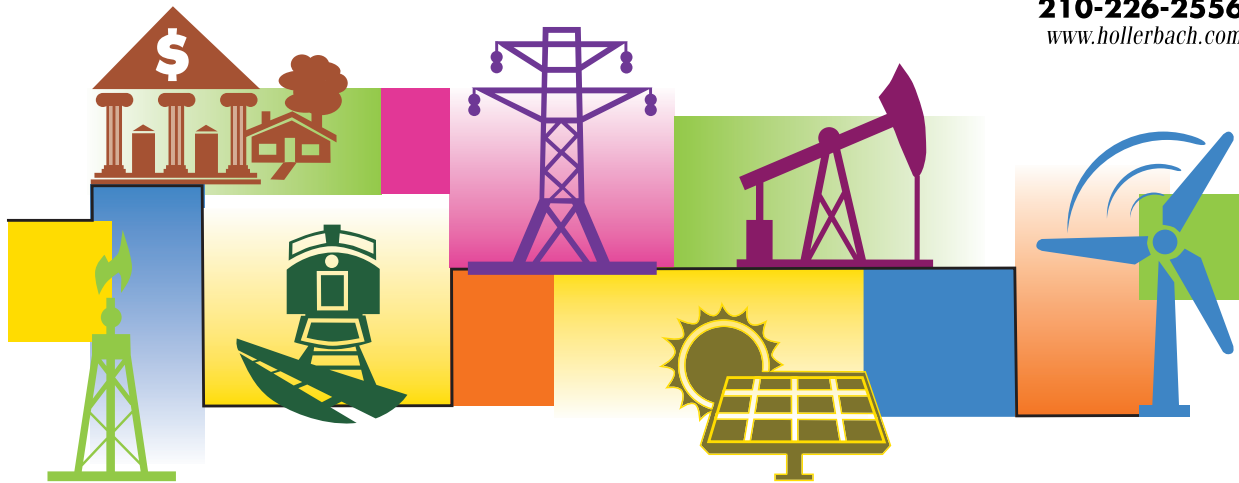


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# PRESIDENT'S *Message*

Megan Goor, TBLS-BCP

**M**y name is Megan Goor. I am very excited to serve as your president for the next year. I work for Art Brender and John Brender of The Brender Law Firm, a general plaintiff's practice with an emphasis on personal injury, civil rights, and criminal law, in Fort Worth. It has been a phenomenal journey! I have been in countless trials and involved in cases from intake to trial to all levels of appeals. I was even fortunate enough to be involved with two Supreme Court cases and went to the U.S. Supreme Court for an oral argument with my firm. As I tell everyone who asks me how long have I worked for my attorney, I say, "33 years and, yes, before you ask, I did start when I was 9 yrs. old and we broke child labor laws!"

Even as a senior paralegal, the PD has empowered me. Our organization offers so much and is a source of motivation for me. As you can imagine, I have seen the role of the paralegal change dramatically over that time. The programs offered today were barely in existence when I was going to school. I began working in another law firm as a runner while in high school and shortly thereafter started working where I am today. I was fortunate enough to continue my college education at the same time and later became Board Certified in Personal Injury Trial Law. Having worked for a solo practitioner in a thriving litigation practice, I was unable to become very involved with the Paralegal Division until much later in my career. One of my biggest regrets is not having participated in the PD earlier in my career! If there is one bit of advice I could stress to our members: Do not make that mistake. Get involved today!

The PD was established in 1981 upon the shoulders of some great leaders and pioneers of the profession. Thanks to its engaged board members, committee chairs and volunteers, the PD has a history of exceptional success furthering and

enlightening the paralegal profession. These accomplishments result from the interconnection of strong leadership, unmatched constancy and the numerous members of the PD who continually provide the support, resourcefulness, and passion for both the Paralegal Division and the profession.

This year marks the 35th Anniversary of the Paralegal Division! What an exciting time! We hope you can join us in recognizing this at TAPS in San Antonio, September 28–30, 2016.

One of my concentrations this year is to improve the awareness of the paralegal profession and the utilization of the role of the paralegal.

Paralegals and attorneys have the responsibility to remain current and updated in the realm of current technologies paralegals may employ in assisting their attorneys. Specifically, Texas Disciplinary Rules of Professional Conduct, Comment 8, states:

## **Maintaining Competence**

8. Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law. To maintain the requisite knowledge and skill of a competent practitioner, a lawyer should engage in continuing study and education.

How can we comply with this competency directive? Excellence in education.

Technology will allow us to do more and that is what you do—so much more! We have to improve our skill set with



knowledge and technology. We, as paralegals, need to involve, evolve, educate, and diversify ourselves. There are many ways to accomplish that. Look into becoming board certified, learn about new programs, and take CLEs in other areas. The Paralegal Division can assist you with all of these.

Becoming more knowledgeable or current about areas of law through CLE, court procedures, and even software, provides you with a prime opportunity to showcase your knowledge to your attorney and firm of the value paralegals bring to the attorney with regard to time management and allocation of appropriate duties allowing the attorney to focus on practicing law. Paralegals can assist in, just to name a few, the following: conducting client intake interviews; corresponding with clients and counsel; drafting pleadings, discovery, and documents; summarize depositions; preparing clients for court hearings; reviewing and researching legal periodicals and relevant law; and preparing and assisting during trial.

We are all so different—different backgrounds, experience, areas of the state, and areas of law—but we share one very important thing—a passion about the legal profession. With your membership and involvement, and just with that commonality, you not only help to empower others, but that also empowers the PD.

As your president, I will strive do my part to ensure the Paralegal Division's history of success and want to thank you for allowing me the opportunity to serve. What brings out the best in each of us, empowers us all.

# TPIJ

## Texas Paralegal Journal

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# EDITOR'S *Note*

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

If you are holding this issue in your hand, you are holding a dinosaur because this is the last printed issue of the TPJ. The TPJ premiered in 1995 and more than 80 issues are available in the archives on the PD website. A lot has changed in the past 21 years.

The TPJ has been an informative magazine for the PD's members, and an important marketing tool in developing membership and relationships with vendors and advertisers. However, a lot has changed since 1995 and we now live in a digital age, so the TPJ will complete its transition to a digital-only format after this issue. (Note: This means do not call your District Director in January to say you did not receive your Winter issue of the TPJ in the mail—because none will be mailed!) I hope you have already taken the opportunity to review the Summer 2016 issue online, and this Fall 2016 issue will soon be online, too, if it is not already.

As always, the TPJ relies on attorneys across Texas who share their substantive legal articles with the TPJ and the PD members. We are fortunate this issue to have an article by John K. Grubb about the significance of separate property in a divorce in Texas. Even if family law is not your area, this article is a must-read.

Mark McBrayer shares his article overviewing the new overtime rules. This could affect many of our attorneys' clients as well as our own friends and family.

One thing that has always amazed me is how some attorneys are fantastic negotiators while I cannot even negotiate with my dog how many treats he should (not) have each day! Lea Noelke shares her article on Negotiating the Best for Your Clients: How to Win/Win in Mediation in this issue. I took notes. Seriously. She focuses an entire section on Preparation—and that means paralegals.

A cornerstone of the vitality of the PD is the student members, those bright-eyed newcomers who are going to replace us one day. I do not say that with any malice, as I look forward to the day the next wave of experts comes up and takes over. I'll have a stack of work just for them! Paralegal Mary Wintermote writes about the significance of PD's student membership in this issue.

There are many other interesting articles in this issue, as well as an introduction to the 2016–2017 Board of Directors and the Executive Committee, and Paralegal Day plans throughout the State. I hope you will read them all as you flip through these pages for the last time.

See you in the digital world next issue!



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# The Significance of Separate Property in a Divorce in Texas

By John K. Grubb



Historically, Texas has treated a marriage between a husband and wife somewhat like a partnership, with property acquired during the marriage belonging to the community estate. Many of the community property concepts in Texas were derived from Spanish law, and survive to this day. The partnership, or community property approach to marriage holds that each party brings unique talents to the marriage, that the parties work together to support the marriage as husband and wife, and that the property that either one or both of them acquire, belongs to the community estate. The legal definition of community property in Texas is that it “consists of the property, other than separate property, acquired by either spouse during marriage.” Along with the legal definition of community property, there is a legal presumption in Texas that all property possessed by either spouse during or on dissolution of marriage is community property.

By contrast, a spouse’s separate property consists of:

- (1) the property owned or claimed by the spouse before marriage;
- (2) the property acquired by the spouse during marriage by gift, devise, or descent; and
- (3) the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage.

**The burden is upon a person claiming separate property to prove that the property is in fact separate by “clear and convincing evidence.”**

In a normal case, the party has to prove facts by a preponderance of the evidence—the greater weight and degree of credible evidence. In a criminal case, the party has to prove that the defendant is guilty, “beyond a reasonable doubt.” The “clear and convincing evidence” test is somewhat analogous to 75 percent, or more, of the evidence.

Generally speaking, a party’s testimony is insufficient to prove that a piece of property is their separate property. I have watched case after case when the Judge ends the trial by saying something to the effect of, “You did a really good job of explaining the property to me, but you did not quite meet the burden so I have to find that the property is community property”—and boom, here comes the axe to what you thought was your separate property. Furthermore, trial judges in Texas are aware that the Court of Appeals frequently reverses the trial judge’s finding of separate property because to the Court of Appeals, the clear and convincing evidence standard has not been met.

In Texas, upon divorce, the Court will divide the community property in a manner





the Court deems just and right. **Please note that the Court does not have to divide community property equally.** Instead the judge gets to divide community property in a manner the Court deems just and right.

**The significance of separate property in a divorce in Texas is that if a party can show by clear and convincing evidence that property is their separate property, the divorce court cannot divest them of the title to their separate property.**

It is not uncommon to find cases where one party has significant separate property, they are able to prove that it is their separate property by clear and convincing evidence, the parties acquired very little property during the term of the marriage, and upon divorce the other spouse gets virtually nothing.

Over the years, Texas courts have adopted a number of significant rules regarding how to determine separate property, and how to trace separate property.

One rule is that if a party starts out with separate property, sells that separate property and acquires new property during the term of the marriage, the new property becomes a spouse's separate property, provided they can trace the acquisition by "clear and convincing evidence." For example, if a party has a \$300,000 certificate of deposit prior to marriage, is married for five years, liquidates the certificate of deposit for \$300,000 and uses the money to purchase a ranch, then the ranch becomes that party's separate property. Frequently, in order to be able to adequately trace separate property, it is necessary to hire a forensic accountant to analyze all of a party's transactions and be available to testify.

Another rule that Texas courts have adopted over the years is the so-called, "inception of title" rule. If you will note, the definition of separate property includes property that was **owned or claimed** by a spouse before marriage. For example, if a spouse enters into an earnest money contract to buy a piece of property prior to marriage, and then closes on the property

after marriage, the property remains their separate property since it was claimed prior to marriage.

Another rule regarding separate property is that the appreciation on separate property remains a spouse's separate property. If a spouse owned 100 acres of land on the date of marriage, and that land is valued at \$1,000 per acre (or \$100,000), and 30 years into the marriage, that spouse sells the 100 acres of land for \$50,000 per acre (or \$5,000,000), the entire \$5,000,000 is the spouse's separate property. The same rule applies to other assets, such as stocks, small businesses, equipment, gold, etc.

Another rule of separate and community property in Texas is that **the income from separate property is considered to be community income.** For example, if a party owns 100 acres of land, and rents it out for grazing rights for \$5,000 per year, and saves the \$5,000 per year in a savings account, and then gets divorced after 10 years, the entire \$50,000 in the savings account is community property. The same rule applies with income from stock. Many people use the dividends on their stock to reinvest and acquire new shares. If a spouse starts out the marriage with 1,000 shares of stock and receives a 4 percent dividend each year, then uses the dividend to acquire 40 shares of stock, and at the end of the 10-year marriage has 1400 shares of stock, the initial 1,000 shares of stock constitute the spouse's separate property, but the 400 shares of stock acquired with the dividends constitute community property and is subject to division by the Court.

Another rule of separate property is that if part of the separate property is severed off during the term of the marriage, the proceeds from that severed property constitute a spouse's separate property. This usually arises in connection with oil and gas, and timber. If a person owns a tract of land prior to marriage with mineral rights, and oil is discovered on the property, when the person sells the oil, they are actually selling a piece of their ownership interest in the land each and every year—therefore, the sale of oil is not considered

income, but is considered the sale of the property and is treated as a spouse's separate property. The same rule applies with timber.

All too often, clients place little emphasis upon the importance of separate property in a divorce. They are wrapped up with establishing new households, dividing the furniture, children's schedules, and establishing their new life. Unfortunately, by not paying attention to the importance of identifying and tracing separate property, a litigant in a divorce frequently shortchanges him or herself.

Additionally, my observation is that judges in Texas are overworked and overloaded, so they are not going to sort through all of a client's documents to satisfy themselves that property is in fact separate property—they are going to take the easy way out, find the property is community property, and then may use their discretion to award the party claiming separate property a disproportionate share. As a practical matter in Texas, I have found in is almost always necessary to hire a highly qualified forensic certified public accountant to work with the client and the client's attorney in identifying and tracing separate property. And since this can be a time consuming job, the sooner the process is started, the better.

*John K. Grubb is an attorney in Houston.*





# Message to Employers: New Overtime Rules More Than Double The Salary Threshold for Exempt Employees

by Mark McBrayer

In May, the Department of Labor issued new regulations, to take effect on December 1, 2016, that increase the salary threshold that must be met before an employee may be claimed as exempt from the overtime payment requirements of the Fair Labor Standards Act. The new rules **more than double** the prior annual salary threshold level—from \$23,660 (\$455/week) to \$47,476 (\$913/week).

Importantly, the new rules only change the threshold salary test for exempt employees; it does not affect any of the overtime exemptions (for executive/supervisory, administrative, professional, outside sales, and computer employees) that employers have previously relied on for purposes of classifying an employee as exempt under the "primary duty" test.

A new provision in the rules takes some of the sting out of this "double whammy" by allowing employers to meet up to 10% of the new threshold amount by including non-discretionary bonuses, incentive



pay and commissions in the amount, but only if those payments are made on at least a quarterly basis. These payments, however, no longer count toward the highly compensated employee threshold. Further, under the new rules, the salary threshold increases to \$134,004 for highly compensated exempt employees, who are non-manual labor office employees who perform at least one exempt supervisory, administrative or professional duty.

Employers with salaried exempt employees should use the next few months before the new rule takes effect to make the necessary adjustments in order to comply with the new rule.

The following areas will be critical in light of the changes:

1. Determination of employee status;
2. Tracking of hours;
3. Raises and threshold level analysis;
4. Overtime and policies concerning new changes;
5. Hiring analysis in response to the new law changes;

Begin planning now, and hopefully your only surprise in December will be what you get for Christmas!

*Mark McBrayer is a partner at the law firm of Crenshaw, Dupree & Milam, LLP in Lubbock.*

## Negotiate the Best Results for Your Client

*How to Win/Win In Mediation*

By Lea Noelke

### I. INTRODUCTION

**R**econciling the win-loss attitude of litigation with the win-win mantra of mediation requires patience, skill, and mostly preparation. The process of mediation does not mean that there must be a meeting in the middle. In family law, there are numerous situations in which the middle is not appropriate. Joint custody is fast becoming the preferred settlement in divorces with minor children. So

much so, in fact, that parents are on the defensive if they choose to oppose such an arrangement. Should a parent meet in the middle and agree to jointly raise their children with an emotionally abusive, controlling spouse? Should all divisions of community property be equal? There are many situations in which the community estate should not be divided equally. A homemaker, twenty years out of the job market, should receive more of the com-

munity estate than her spouse who is an executive at Dell Computer. A 60 year-old victim of downsizing should receive more than fifty percent of the community estate if his spouse recently inherited a large estate. The focus of this article is to explore ways to avoid the middle when the middle is either not in the best interest of the children or when an unequal division of the community estate is appropriate. Mediation does not require attorneys to represent clients less zealously. It does require us to learn new skills and to listen a little more closely.

### II. PREPARATION.

As in all matters of litigation, to be successful in mediation one must **prepare**. What does this mean in family law? The

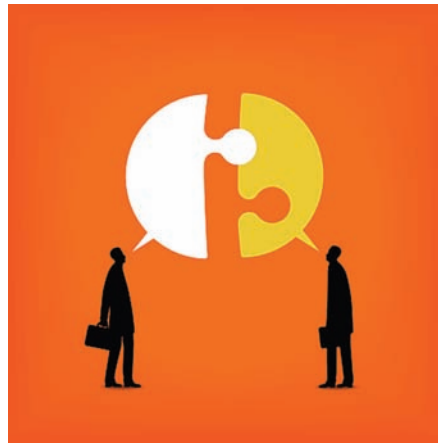
advocate must have a working knowledge of the facts of the case, including a psychological history of the marriage and the nature and extent of the community and separate estates. Different families require different levels of preparation. There are certainly budget constraints to consider. As a general rule, a case should be prepared for mediation much like it would be prepared for trial.

#### A. Psychological History of the Marriage.

A full psychological history of the marriage is always needed to develop negotiating strategies as well as settlement evaluation. In cases involving children, a good history is vital in making judgements regarding conservatorship and visitation. These facts can many times serve a double purpose in planning how to best "convince" the opposing party of the merits of your position as well as give insight on what approach to take in negotiating at mediation. What type of argument or style would work best with a particular personality type--confrontational? Conciliatory? Technical? Passive? In many situations, the idea must come from the husband or it will be rejected. It is crucial to have a plan prior to entering mediation on such issues.

Although this list is not all inclusive, it is helpful to have the following information before beginning a mediation:

- family history of both spouses,
- educational background of the parties,
- occupational history of the parties,
- health and special needs of the children of the parties,
- psychological dynamics of the marriage,
- number of marriages,
- physical health of the parties,
- mental health of the parties,
- hobbies and extracurricular activities of the parties,
- extramarital affairs of the parties,
- marital counseling,
- individual counseling,
- aversion to conflict of the parties,
- expected inheritance of the parties,
- history of emotional abuse,
- history of physical abuse,
- any and all skeletons in the closet,



- history of alcoholism, drug abuse or other compulsive behavior,
- comparative desire to end the marriage of the parties,
- importance of material possessions to a party's emotional security,
- ability to emotionally separate from children,
- influence from in-laws,
- concern about retirement vs. concern for maintenance of present lifestyle,
- aversion to debt, and
- need for control or need to be controlled.

The list could go on. In my view, the important facts will be obvious. I ask general questions like, 'Is there anything he is embarrassed about?' It is crucial to learn if either spouse is averse to conflict. Does either spouse get up and leave the home or the room at the start of an argument? Many times it is necessary to depose the other spouse prior to the mediation to get a complete assessment of the opposing party's personality.

#### B. Extent and Nature of Community and Separate Estates.

In terms of preparation of the assets and liabilities, at a minimum an attorney should prepare a Proposal similar to the Travis County Magic Thursday forms. The more complex the property, the more developed the preparation. Most cases require the exchange of Sworn Inventories and Appraisements prior to mediation. If there are tracing issues, counsel should have trial exhibits ready to support their arguments. Such exhibits are extremely helpful in convincing the opponent of the quality of your argument and the strength

of your case.

It is axiomatic that an advocate should be briefed on the important legal issues before beginning mediation. Are there any cases to support the reimbursement claim? Consider bringing extra copies of the cases upon which you are relying.

#### C. Preparation of Mediation Notebook

As in preparing for trial, it is advisable to prepare a mediation notebook. Attached as Exhibit A is a table of contents of a good mediation notebook. This table will not fit all situations and can easily be modified. Another advantage to such a table is that the task of constructing the notebook can easily be delegated to a staff member.

The client should be involved in the creation of both the outline of the proposed property division and all child issues. Prior to going to mediation, an initial offer should have already been made. The proposal can be brief, similar to the Travis County Magic Thursday forms. Be certain that it contains all issues that need to be resolved along with a complete inventory of assets and liabilities.

#### D. Preparation for all the Issues.

Every successful settlement resolves all outstanding issues. Unfortunately, in the pressure and stress of a ten-hour mediation, issues can be forgotten. Sometimes the issue is significant enough to endanger the entire settlement. Sometimes Rambo or Rambetty will intentionally threaten to blow the whole deal unless you succumb entirely to their demand on the outstanding issue. Consequently, I attach as Exhibit B a comprehensive list of issues for family law matters.

This list has a two-fold purpose. First, it serves as an excellent review of the potential issues which could arise during mediation. Prior to the mediation, it is important to prepare a position on each relevant issue. This prevents surprise and insures that the client is educated and involved in the process. Second, the list helps insure that the mediation resolves all of the issues. **This list should be included in all mediation notebooks.** Failure to resolve all issues in a mediation or settlement can be disastrous. Case law prevents a trial court from filling in the blanks at



a Motion for Judgment hearing. Litigants are required to proceed either to trial on the merits or to seek to enforce under a contract theory. *Cary v. Cary*, 894 S.W.2d 111 (Tex. App.—Houston [1st. Dist.] 1995, no writ.) and *Padill v. La France*, 907 S.W.2d. 454 (Tex. 1995)

#### E. Preparation of the Client.

It is self-evident that the client should be prepared for the mediation. The client should first be fully briefed on the definition of mediation. In essence, this includes the typical opening statement made by the mediator. Be sure to cover caucuses, confidentiality, impartiality, ownership of the settlement, binding and nonbinding nature of the settlement and the role of the mediator. The client should also be fully informed of the opening positions of their case. A caveat: some mediators want the parties to state their goals at the beginning of the mediation. A party should be prepared, consequently, to give a general outline of their goals for mediation. Where appropriate, the client should be made aware of the bottom line under which the case cannot be settled; in other cases, the client should be prepared to be flexible and open-minded. Finally, the client should be advised of the cost of litigation and the likelihood of success in court. In my view, the less my client learns about mediation from the mediator and the opposing counsel, the better.

#### III. CHOOSING A MEDIATOR.

So much effort and posturing occurs over selecting a mediator. A mediator by definition is impartial. Mediators have also been described as *advocates of settlement* thus confusing the definition and role of the mediator. What factors should be considered in selecting a mediator? Needless to say there are some mediators who should not handle custody cases and there are some mediators who should not handle complex property matters. Include your client in the discussion of selecting a mediator. What type of mediator does the client think their spouse is more willing to listen to?

Although not intended to be all inclusive, an attorney should consider the following:

- **Compatibility with the parties.** Regardless of the competency, experience, neutrality or gender, if the parties do not respect or cannot communicate with the mediator, chances of success are slim.
- **Personalities of the client.** If my client is unreasonable and strong willed, a stronger mediator will be needed. If my client has been emotionally or physically abused, a mediator who is a good listener may be needed.
- **Special competency in the particular issues.** Some cases will need mediators who have special training such in accountancy, mental health, or child development.
- **Importance of sex of the mediator.** Male or female? Both male and female?
- **Judicial experience in area.** Some clients will be more impressed with the experience of a former judge and will listen to their opinion more closely.
- **Style of the lawyers.** A no nonsense, experienced mediator will be more effective with Rambo or Rambetty.
- **Hourly rate of the mediator.** Common sense rules here. Needless to say, budget considerations are many times the only factor.
- **Ability of mediator to diffuse the emotional issues.** Some mediators have a style of 'just the facts.' Other mediators want to know about the family of origin. In highly emotional cases, a mediator must be able to get through to the legal issues. In the more mundane cases, the mediator should not waste time dwelling on the feelings of the parties.
- **Importance of the mediator's ego.** How involved is the mediator's ego in the settlement of the case? Does the mediator advertise the win-loss rate? How does the mediator define win? Can your client withstand the pressure to settle from such a mediator?
- **Impartiality of the mediator.** In the past, this factor was a given. With the development of the mediation practice, many mediators describe themselves as 'advocates of settlement. Others believe that they have been retained to advise the parties of what their decision would be under these facts. Others believe that it is their duty to advise the parties of

what would happen at the courthouse. Such a mediator would be appropriate if he or she agreed with your theory of the case. Many times such a mediator crosses the line of impartiality.

- **Aversion of mediator to litigation.** Is the mediator allergic to litigation? Is the mediator a polemic? Such a mediator can be extremely persuasive to the client who is already suspicious of divorce lawyers. Such a mediator will dominate a client who is overly frightened of litigation costs or who has performance anxiety about the courtroom. This type of mediator can also control the litigant who has a grandiose view of their spouse.

#### IV. WIN-WIN?

Getting to win-win is as easy as defining win-win. Unfortunately, win-win cannot be defined. Win-win in a case involving custody of children: what is in the children's best interest? Win-win in a property case: what is just and fair. These concepts are impossible to generalize and are obviously to be defined on a case by case basis. The goal of mediation is to try to meet these definitions independent of the parties' resentments and anger. In mediation, it is incumbent on the parties, the attorneys, and the mediator as a stated goal to have best interest of the children and a just and fair division of the property. In this important regard, mediation is different from litigation *from the party's point of view*. In litigation, the point is to achieve the client's wishes. In mediation, the point is to overcome resentment and anger and prevent it from playing a dominant role. Consequently, win-win is not possible unless the mediator is adept at diffusing the emotions.

Win-win is even more elusive when the attorneys and mediators views are involved. It is extremely challenging for the attorney and mediator to avoid substituting their definition of win-win for the parties' definition. Is the most child support always best? Not if the obligor is willing to pay for 100 % of the college education and the obligee has a good job. Is Sole Managing Conservatorship best when the other side expresses no preference or is not willing to make it an issue? Many parents are much better parents post divorce

if they have joint custody. Many parents are willing to pay their support if they are actively involved in their children's life? Many parents are willing to spend more time with the children and become better parents after the separation. If parents are going to have to deal with each other on child issues, isn't it better to allow one or both parents to save face?

Defining win-win in property cases presents its own special challenges. Not all people are motivated by getting the most. Many people do not define 'just and fair' as maximizing the assets and minimizing the liabilities. Some people want their ex-spouse to maintain their dignity--to save face. This type of individual is extremely challenging to represent in litigation. In mediation, specific strategies can be used to protect the client for the future and to truly obtain this person's definition of win-win. Specific strategies include contractual alimony, promissory notes, life insurance, and post-divorce jointly owned property. The key point is to let the mediation be client driven as opposed to mediator and/or attorney driven. Care should obviously be taken that the parties are on firm ground psychologically and emotionally. Attorneys must confirm in writing with the client that the agreement is being made independent of the attorney's advice and that more favorable result could occur in court.

## V. NEGOTIATION STYLES.

In my view, negotiation styles in mediation are not materially different than those in settlement. Most experienced and successful attorneys agree that a negotiator, like a litigator, should develop his or her own individual style and stick to it. Attorneys should not try to imitate a style foreign to their personality. Instead, a successful negotiator works with their own limits and is **prepared**. The purpose of this article is not to develop various styles and methods of negotiation. There are numerous treatises and articles on the subject. In addition, there are full-day seminars designed to train attorneys in the art of negotiation.

The purpose of this subsection is to explore some of the dynamics which are specific to mediation. In a mediation, an attorney must:

- (1) Know the speed of the dance and be sensitive to it. Every mediation has its own rhythm. In this context, rhythm means the pace at which the parties relinquish points or issues. Some parties want to work quickly. Others want to move slowly. If an attorney is aware this, he or she can respond accordingly. If the opposing side is a fast dancer, it might behoove the attorney to move slowly. If the opposing side is a waltzer, beware and be patient. Either dancer can dictate the rhythm. Neither side should be allowed to dictate the result if one is aware of the dynamic.
- (2) Know the patience quotient of the opposing attorney and the opposing party. Many factors determine the patience quotient of the parties: the time of day, the stage of litigation, the mood of the parties and the attorneys, the retainer balance, the mediator's hourly rate, and the basic personality of the parties. Much like the rhythm of the dancers, attorneys should be aware of this important factor. If the opposing party is growing increasingly impatient, an attorney might suggest quitting for the day or taking an hour break. If an attorney is representing an impatient client, special care must be taken before the mediation preparing the client for such a tactic and for the importance of staying patient. Such a client should go for a walk during caucuses and should stay away from all the cookies that are so popular these days. Attorneys should also be aware of their own levels of patience and should finally not let the mediator's impatience control the session.
- (3) Be able to walk away from the table. The pressure in a mediation to settle at all costs can be intense. Mediation in family law involves issues which the parties must live with for years. Prior to going into mediation, a client must be prepared to face this pressure. The client who is inherently opposed to confrontation or who wants to please is especially susceptible to this pressure. When representing such a client, it might be advisable to create a bottom line before starting mediation. Come to the mediation with a list of throwaway points. Depending on the rhythm of

the dancers, relinquish the points at the appropriate time.

- (4) Trust the process. On the other hand, the decision to walk away from the table is one which should be made sparingly. Anyone who has been exposed to the mediation process has surprising war stories. Parties who are polarized can and do come to fair and just settlements. The client who is confrontational, stubborn, or narcissistic may need a little more time to be able to consider the other side's position. The mediation process itself can work wonders on such an individual.
- (5) Remember that the point is to convince the opposing party to settle. Mediation is many times the only opportunity an attorney has to talk face to face to the opposing party. This can be an extremely valuable opportunity to clear the air if the attorney is perceived to be a road block to settlement. It is also an excellent time to gently inform the opposing party that you are prepared and that you know where the courthouse is. Mediation gives the attorney an opportunity to discuss the opposing party's Achilles heel in a non-threatening, matter of fact style. Finally, it is an opportunity to communicate that there is a common interest to stop the litigation and come to a fair settlement.

## VI. PRACTICAL POINTERS.

It is not possible to predict the length of a mediation. This inherent uncertainty requires planning to insure that avoidable conflicts do not affect the mediation. As a practical matter parties should be prepared to spend the entire day until at least 6:00 p.m. in the mediation. Consequently, there should be no plane reservations set for the day of mediation. If the client has special food requirements or is diabetic, make sure appropriate steps are taken to accommodate this. Prepare the client for long waits and to consider bringing a good book. Although it is seemingly simplistic, advise your client to get a good night's sleep.

All of these practical considerations are designed to insure that the parties are fresh enough to stay with the program. Do not allow your client to make decisions or sign



agreements when exhausted. Although a deal may fall apart if the parties sleep on it, it is doubtful that the deal would have been successful if the party signed it while exhausted. In addition, the attorney can be sued for giving inappropriate settlement advice. Exhausted attorneys make more mistakes than rested attorneys. Consider signing the agreement but with the ability to revoke it within three days.

Exhausted attorneys can also neglect to include all of the issues. An advocate must be extremely cautious and make sure that the agreement is complete. There are clever and unscrupulous attorneys who intentionally exclude issues in order to gain advantage in the post-mediation struggle to draft the decree. If the parties

have paced themselves and come rested to the mediation, such mistakes are much less likely to occur. Remember the list of issues; review it several times before signing the agreement.

#### VII. CONCLUSION.

Win-win in mediation obviously and problematically depends upon the definition of win-win. Mediation is unique in its goal of convincing the parties to step aside from their personal interests and seek solutions which are not traditionally held to be win positions in court. Reaching win-win is not as lofty as it sounds if the attorney and the client take the process seriously and come prepared.



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## The Significance of Student Membership in the Paralegal Division

by Mary Wintermote

Thirty-five years ago, when the State Bar of Texas formally recognized the position of legal assistant (which was later changed to the title paralegal), it became the *first state bar* association in the United States to create a division for the profession. Over the years, many things have changed. Technology has advanced from the trusty IBM Selectric and carbon paper to computers, printers, apps and iPads. Metal filing cabinets have given way, to a large extent, to hard drives and storage folders on a thing called "the cloud." Gone are the days of pouring over the *West Legal Digest* and stacks of *Southwest Reporters* in the library to do research because now you only need to type a natural language Google-style search into the search bar and, voilà, countless hits appear, you print out the cases you want and go on to the next task.

Another area that has significantly evolved is the educational offerings and requirements for someone who wants to enter the legal field as a paralegal. In the 1960s, the first paralegals were legal secretaries trained on the job by their supervis-

ing attorney to help offload some of the daily duties of the attorney. The on-the-job training worked for many years and, as the profession grew, many different types of programs affiliated with schools arose. In the early days of paralegal programs, as in my case, college counselors directed potential students away from the program because a paralegal "was just a glorified legal secretary." As the need for trained paralegals continued to increase, community colleges, vocational schools and universities developed degree programs specifically designed for the paralegal field. Today, several education options exist for a future paralegal to develop a wide range of basic legal knowledge of and concepts. There are continuing education certificate programs, associate degree programs, four year college degrees in Paralegal Studies and even advanced programs enabling a paralegal to obtain a master's degree in Legal Studies.

Developing a good, strong base of knowledge in different areas of law, the rules, and necessary research and writing skills are tantamount to becoming a good

paralegal.<sup>1</sup> But as a student acquires his/her education, there are other things they can do to enhance the book learning. One valuable investment in your future is membership in a paralegal professional group such as the Paralegal Division of the State Bar of Texas, a student paralegal group or a local association. This article will deal primarily with student membership in the Paralegal Division of the State Bar of Texas.

A student member of the Paralegal Division has access to the *wide range of the same benefits* as all other membership types, including those available to members of the *State Bar of Texas*. Some benefits are more relevant to students than others during this formative time in your career. *MyTexasBar.com* allows the student to track legislation and access case law as well as offering forms a student might find helpful. The student has ready access to countless years of knowledge and experience through various outlets. A student member can pull from decades of combined member experience through the E-Group Forum where there is virtually an around-the-clock knowledge base of information a student may need. Send an e-mail asking a question and undoubtedly there will be paralegal minds out there willing to answer your question or point you to where to find the answer. The Paralegal Division maintains a "Members Only" section on the website containing

a Member Directory, that allows you to track both CLE and pro bono hours. The Texas Legal Directory (Blue Book) lists the names not only of attorneys, courts, and legal vendors but contains a directory of Paralegal Division members.

Students have access to CLE events including free Brown Bags offered through their Districts, traditional seminars, *TAPS*, the Paralegal Division's annual 3-day continuing legal education event and a myriad of webinar topics through the statewide CLE Depository. If a student chooses to participate in the Mentor/Protégé Program, he/she will receive direction and general support on various topics including ethics, career advancement and professionalism. By attending events and becoming a protégé, the student has an opportunity to network with paralegals in the field that can pay dividends to the student in countless ways. Finally, when the time comes and you are looking for that first job, the student member has access to the job bank and the monthly job listing published by the State Bar of Texas.

When you choose to become a student member in the Division, your membership can be used in one of two ways: as merely something to fill a space on your resume or as a vehicle to help you begin down your career path. To realize the full benefit of membership, involvement is key. But how do you get involved? You are new and, understandably, hesitant to reach out to people you don't really know. Do not feel that way. To break the ice, new members receive a welcome e-mail from their District Director or Membership Sub-Chair possibly with an attachment surveying your interests and desire to become involved. Complete the survey, attach it to the e-mail and return it in a reply. Even if you don't want to jump in as a volunteer, let your Director know about you and what interests you. By doing that, you have taken the first step toward involvement.

Communication doesn't end with that welcome letter. Each month Paralegal Division members receive an e-mail newsletter from their Director advising of events in the Division and District. Take time to review this information and, if there is something that interests you, e-mail your Director and ask for information. In addition to the District e-mail, the Division

publishes a monthly digital newsletter, *The Paralegal Pulse*. It also provides information about what is happening in the Division as does the *Paralegal Division blog*. The Paralegal Division Coordinator ([pd@txpd.org](mailto:pd@txpd.org)) is also a contact who can provide information or put you in touch with the right person to assist you. Besides CLEs, Districts schedule pro bono, community service projects and, in some instances, member socials. In addition to the *Paralegal Division website*, the PD and some Districts maintain a social media presence through *LinkedIn*, *Facebook* and *Twitter*. The planned Division and District events provide the student with an opportunity to get to know paralegals in your area in a smaller, less imposing setting. Don't be tentative about attending one of these events because, to quote a fellow paralegal, "We get you. We are your people and we want to help." The more you choose to become involved, the more you expand your reach in the paralegal community and that is helpful when it comes time to find that first job.

Most paralegals are very proud of their careers and the advancements made in the profession but we are a very protective. It is vitally important that there be talented, motivated up-and-coming paralegals to step in to our places when the time comes a change of our status to "Emeritus." Show us a student with drive and initiative and we are ready and willing to help. Generally, when you look at organizations, it seems like the same people are always volunteering which is great, but that sameness can also lead to doing the same things, the same way. However new members, including student members, bring new ideas and concepts to the table. Those new ideas and that new enthusiasm is what will keep the Paralegal Division and the profession a vibrant, thriving one.

*Daymond John*, one of the entrepreneurs featured on the TV show "Shark Tank," not only tells a great rags-to-riches story, but his five tips to success in business can easily translate to getting and staying employed in the legal field. Mr. John recently spoke in the area and detailed his plan which ironically spells **SHARK** and involves the following concepts:<sup>2</sup>

**S** Set a goal. Regardless of what you want

to do in your life, know where you want to go and visualize it.

**H** Homework. Do your homework (both literal and figuratively). Know what is required to arrive at your goal and set it in motion.

**A** Amor; love what you do. Love the people who support you and let them know it. Show your love to people in need. (This is where pro bono and volunteer work enter the picture)

**R** Remember you are your own brand. You create the perception others have and you need to take an active role in defining yourself.

**K** Keep swimming. When encountering roadblocks, you must keep on trying. Everyone is going to have setbacks and to be successful, never quit.

When you exercise these principles as a student, it demonstrates a commitment to learning the profession that is telegraphed to those around you. Every day can be a new adventure in this field and, in your own way, you need to exercise that "shark" in you. You can begin to establish a brand by taking full advantage of your student membership. Hopefully at the end of your course of study, you will have a love of what you do, an appreciation for those who support you and, in all things, keep swimming down your paralegal path. The legendary paralegal portrayed by Julia Roberts, *Erin Brockovich*, has a similar mantra she believes aided in attaining her goals. Erin also spoke recently at an event I was fortunate enough to attend. In the face of roadblocks and hurdles, Erin never gave up; she kept swimming. Her mother called her undying and sometimes trying efforts "stick-to-it-tiveness", but Erin's word for that was a bit shorter "RAM," *the verb* not the noun, a word of action. The principles of Erin's created RAM are the guidelines through which she lives.<sup>3</sup>

**R** Realization. Realization of yourself. You have to be your own inspiration and provide your own epiphanies. You have to realize who you are—the good, the bad and the ugly - before you know where you are going. Be your own hero because no one else can.

**A** Assessment. Take stock in who you are. If you don't like what you see, only you



can change it. Look at your skills, weaknesses, strengths and apply those traits and instincts where they need to go.

**M Motivation.** Motivation is the difference between talent and ability. It is the fuel that keeps you going. Remaining motivated in today's world is difficult but it is the steam that keeps you going. Motivation also means taking a time for self-renewal and recharges your batteries to avoid getting burnt out.

Erin Brockovich and Daymon John are two very different people in dissimilar fields, yet their life principles are very analogous. Both require a lot of self-awareness, work and persistence. That is what is also required to be a successful paralegal—to

have your own "Erin Brockovich moment" and, by being an involved student member, you become part of a group of professionals who "get you" and want to help.

A student member who has skills and is interested in technology, websites or the internet is always welcome to share those talents and knowledge. There is continually room for a student member to begin developing leadership skills through involvement at the Division or District level. If your school doesn't have a group for student paralegals, talk to your program directors about starting one then talk to your Director about how the Division can help. Take advantage of the benefits available to you. Make your student membership count because you get what you pay

for. With initiative, determination and a zeal for the legal field, you might be able to write your own path so that when the time comes, many a paralegal would be confident in handing you their pen. And always remember, you are not a "glorified legal secretary."

1. The opportunity to conduct free legal research through Casemaker and Fastcase can be a useful benefit to a student.

2. John, Daymond. "Shark Tank Entrepreneurship." Maverick Lecture Series. University of Texas at Arlington, Arlington, TX. 10 Nov. 2015. Lecture.

3. Brockovich, Erin. "Keynote Address." Planned Parenthood of Greater Texas Annual Luncheon. Omni Hotel Fort Worth, Fort Worth, Texas. 31 Mar. 2016. Speech.

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## ELECTRONIC SERVICE ADDRESS

August 1, 2016

Dear Attorney,

The Supreme Court of Texas issued an order on June 14, 2016, requiring that all Texas attorneys provide the State Bar an electronic service email address to serve as the attorney's official email address in the statewide e-filing system. The electronic service address may also be used by the court system, both statewide and locally, to send important notices such as after a natural disaster.

Providing your electronic service address is fast and easy. Simply login and fill out the online form at [texasbar.com/eservice](http://texasbar.com/eservice).

The requirement will improve the e-filing system by creating a single, official electronic service email address for each attorney in Texas. Currently, the e-filing system is hampered by multiple accounts being created in some attorneys' names.

The electronic service address will not replace your preferred State Bar email address that you use to receive State Bar communications, although you may use the same email address for both purposes.

Electronic service addresses will "go live" in the e-filing system on October 1, 2016. If you do not designate an electronic service address by October 1, your preferred State Bar email address will be used as your electronic service address.

If you are with a law firm of 50 or more attorneys that uses a "clearinghouse" address or addresses for e-service, or would like to find out about setting up a clearinghouse email address for your firm of 50 or more attorneys, the State Bar can help. For assistance, please contact our Membership Department at (800) 204-2222, ext. 1383.

Please provide your electronic service address today at [texasbar.com/eservice](http://texasbar.com/eservice).

If you have questions or need more information, contact (800) 204-2222, ext. 1383 or email [memmail@texasabar.com](mailto:memmail@texasabar.com).

# Continuing Education—Do I Really Need It?

By Mariela Cawthon, CP, TBLS-BCP

Well, as you can probably tell from the letters after my name, I DO need it. It's a requirement for me to complete 50 hours of continuing legal education (CLE) every five (5) years under the National Association of Legal Assistants' requirements for recertification and 75 hours of CLE for The Texas Board of Legal Specialization's requirements for recertification. Fortunately, DAPA offers me numerous opportunities each year to fulfill those requirements. In addition, I am fortunate that my firm provides a monthly in-house CLE opportunity to attorneys and paralegals.

While my practice area and TLBS specialization is in civil litigation, I often attend other subject-matter CLEs because frankly, you just never know when you might need it. In the last few years, I have attended CLEs on diverse topics such as preparing Public Information Requests, preparing medical records requests and reviewing medical records, SEC investigations and Bankruptcy proceedings. And you know what? At some point in the last few years I have had to use what I learned at that CLE in my practice. And, what is equally interesting is that I knew more about the issue than the attorney in some of these areas, so I was an invaluable part of the team.

In today's ever-changing legal market the role of paralegals is also changing. For example, 20 years ago, when I started my career, I would go to trial with an exhibit list, fetch copies, replace copies, make copies, update notebooks, call witnesses, make clients feel at ease, etc. Now, when I go to trial, I not only in charge of all that, I am also in charge of setting up the courtroom technology, creating Power Points and running Trial Director. I am an invaluable part of the team, and a profit center for my firm since I can do what they would



otherwise have to pay a vendor to do. Plus, the client saves money by not having to pay that vendor bill since they have to pay for my courtroom time regardless of how much I am doing. In addition, I have seen many firms "branch out" to other areas of law when they see their bottom line fading in order to bring other sources of revenue. You may be used to doing strictly family law, but suddenly find yourself working on personal injury cases. And, let's be honest... your job is not as secure as you might think. Learning about other areas of the law could benefit you the day you need to update your resume or go on that interview.

Now, you may be thinking to yourself:

- (1) "I'm not certified so I don't have to have CLE. " True, you don't have to have it, but does that mean your paralegal education should be over? No. Whether you are interested in taking a certification exam, I encourage you—no, I challenge you—to go out there and sit in on 4 CLE's a year. That's one hour of CLE per quarter.
- (2) "I've not run across any cases in my daily practice that have required me to go outside the box." True, but you

never know when you will find yourself in that situation. And what if family law is not your calling, but Intellectual Property is? You may be missing out? Or... what if your client for whom you have done probate work for 15 years suddenly finds himself in bankruptcy and wants your firm's assistance to handle it?

(3) "I really just don't have the time." See #1, above. But getting CLE does not have to necessarily mean you have to get out of the office. There are plenty of online seminars offered by reputable organizations such as National Federation of Paralegal Associations ([www.paralegals.org](http://www.paralegals.org)), National Association of

Legal Assistants ([www.nala.org](http://www.nala.org)) and the State Bar of Texas' Paralegal Division ([www.txpd.org](http://www.txpd.org)). Plus, there are plenty of free webinars out there. And, don't forget reading is a great way to learn something new (Texas Bar Journal, Texas Lawyer, and many periodicals that your firm receives). Google some legal blogs and you will find something that peaks your interest in a mouse-click.

Finally, we all need to keep up with our substantive areas of practice. The law is also ever-changing and there may be new developments in case law, rules or regulations of which you (or your lawyers!) are not aware.

At whatever stage of your paralegal career you are in, it is always good to continue to develop as a professional. Taking continuing legal education courses, webinars, or simply reading legal publications is a smart choice for any paralegal.

*Mariela Cawthon, TBLS, CP is a paralegal at Lynn, Tillotson, Pinker & Cox LLP in Dallas.*



# Paralegal Day Plans

## Across the State

Texas Paralegal Day is observed each October, and this is our 35th anniversary. Several Districts across the state have celebration plans, so please take advantage of any of them that might be near you.

**District 2**—Oct. 28, from 11:45–1:00, a luncheon to be held at the Belo Mansion in Dallas. Frank Stevenson, State Bar President, will be the speaker.

**District 3**—October 12, from 12:00–1:15, a luncheon at Reata Restaurant in Fort Worth; Dr. Barbara Kirby, of Texas Wesleyan University will speak. (\$20 per person)

**District 4**—Oct. 20, from 6:00–8:00, a Paralegal Day celebration at Parkside, on 6th Street at San Jacinto, in Austin; Allen Mihecoby, RP, ACP, is the speaker.

**District 5**—Oct. 19, at noon, the 13th Annual San Antonio Paralegal Day Celebration at the Norris Conference Center in San Antonio; Judge John Specia will be the speaker.

**District 7**—Oct. 19, from 5:30–6:30, a social and happy hour at Taste Dessert Bar, in Amarillo.

**District 11**—Oct. 20, at noon, a luncheon at the Midland Country Club, in Midland; Hon. Royal Furgeson is the guest speaker.

**District 12**—Watch for an email about a social.

**District 15**—Oct. 14, from 6:30–8:30, the 2nd Annual Member Appreciation Social, at Russo's New York Pizzeria in McAllen.

**District 16**—Oct. 19, at noon, a brown bag luncheon at the Stanton Tower Auditorium in El Paso; Daniel Ortiz, Asst. General Counsel with El Paso Water Utilities, will be the speaker.

## Standing Committees of the PD

**Annual Meeting Committee**—responsible for planning the Annual Meeting of the general membership of the Paralegal Division.

**Continuing Education Committee**—responsible for planning and presenting at least three hours of continuing legal education in each district per year and/or soliciting substantive legal topic speakers for webinars offered by the Paralegal Division. This committee shall also implement and manage an online continuing legal education program. The committee shall implement and monitor compliance with the six-hour mandatory continuing legal education requirement for membership in the Paralegal Division.

**Elections Committee**—responsible for enforcing election guidelines.

**Membership Committee**—responsible for determining criteria and qualification for membership and promoting growth within the Division.

**Professional Development Committee**—responsible for enhancing the professional development of paralegals, for monitoring articles, state and national legislation and court cases affecting the paralegal profession and for disseminating to the general membership of the Division any national articles, legislative action or court cases which it deems appropriate.

**Professional Ethics Committee**—responsible for interpreting the Division's Code of Ethics and Professional Responsibility, serving as a Grievance Committee, making recommendations to the Board of Directors with respect to disciplinary procedures, and disseminating to the general membership of the Division articles on ethics issues of paralegals.

**Public Relations Committee**—responsible for studying and developing various means to better inform the legal profession and the general public about the paralegal profession and the Paralegal Division, and for nurturing positive relationships with local and national associations of paralegals and other associations throughout the country.

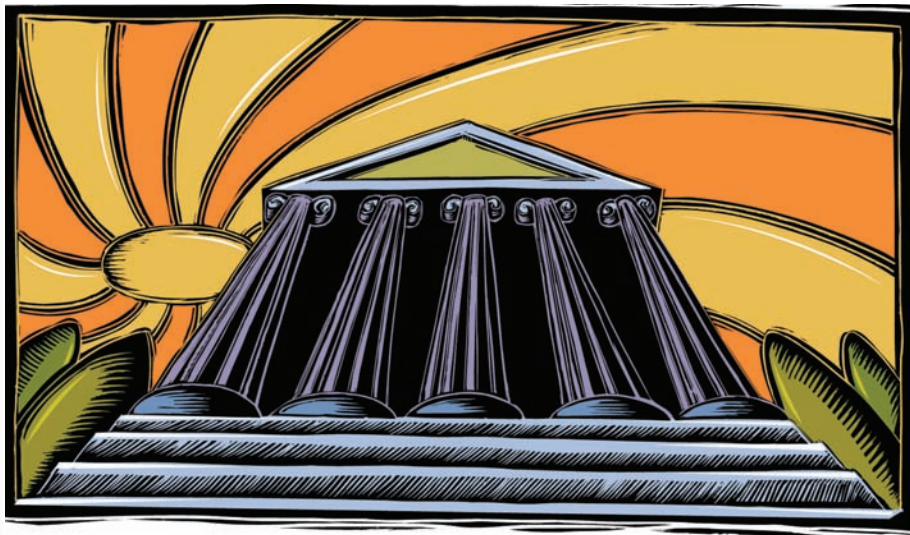
**Publications Committee**—responsible for publishing the Texas Paralegal Journal, the Division's official publication, reviewing and submitting various articles for publication in the Texas Bar Journal, and recommending to the Board any other publications which will be beneficial to members of the Division.

Which one interests YOU? Join today!

To volunteer or find out more information, go to [https://txpd.org/volunteer\\_program.asp](https://txpd.org/volunteer_program.asp) on the PD website to submit your volunteer form today!

# Office of Court Administration Updates

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## About the OCA

**O**CA is a state agency in the judicial branch that operates under the direction and supervision of the Supreme Court of Texas and the chief justice and is governed primarily by Chapter 72 of the Texas Government Code. [www.txcourts.gov](http://www.txcourts.gov)

**OCA Administrative Director Issues Update on State and National Efforts in Collections of Fines, Fees and Court Costs**  
Earlier this month, OCA Administrative Director David Slayton distributed an update on state and national efforts in the area of collections of fines, fees and court costs. The update discusses the Judicial Council's recent publication of proposed rule changes to the Collections Improvement Program (CIP). It also describes the effort underway by an OCA advisory group for a more thorough review of the CIP Rules that are expected to be presented to the Judicial Council at its next meeting on June 3. The update also gives courts, clerks and collections program staff information about the National Task Force on Fines, Fees and Bail Practices established by the Conference of Chief Justices and Conference of State Court

Administrators, on which Chief Justice Nathan L. Hecht and OCA Director of Research and Court Services Scott Griffith-sit. Lastly, information from the United States Department of Justice on the collection of monetary penalties was distributed for consideration by the courts and collections programs.

Subsequent to this update, Chief Justice Hecht met with leaders of the justice and municipal courts on April 26 to enlist their assistance in the national and state efforts. A great dialogue amongst the attendees produced several ideas and will continue into the future.

**Court of Criminal Appeals considers potential impacts of criminal eFiling**  
Implementation of the Criminal eFiling system continues throughout the state. Currently 112 clerks in 78 counties have implemented criminal eFiling on a permissive basis. The Court of Criminal Appeals also held a hearing earlier this month to discuss the potential impacts if criminal eFiling were to be mandated. There were several speakers who discussed the pros and cons of mandating criminal eFiling, and the Court asked questions to better inform

their decision.

## Commission to Expand Civil Legal Services Seeks Innovative Ideas

The Texas Commission to Expand Civil Legal Services, meeting for a second time April 9, urged compiling accurate data to define its charge, discussed the efforts private law firms have committed to pro bono representation and listened as law-school educators describe clinical efforts to represent people of modest means. All agreed that Texas must find a way to match clients who need legal help that they are unable to afford with lawyers who agree to serve that market.

"What we need," Commission Chair Wallace B. Jefferson said, "is innovative ideas."

By the end of the four-hour meeting, the ideas were flowing. That was what Jefferson wanted.

Among the discussion: limited-scope representation—lawyers who might be hired to help on an aspect of a client's case; law schools that train lawyers not just to advocate but also to build solo practices on a modest-means model; "triage" setups involving courthouse "navigators" who can assess a potential client's problems and direct them to lawyers or, perhaps, other professionals when legal representation is not required.

The suggestions and possible proposals explored whether scheduling bar exams earlier—closer in time to when students have taken bar-exam courses—would improve passage rates.

Commission members also emphasized that the need for new thinking exists in both state and federal courts.

"We have two separate categories of need," U.S. District Judge Lee Rosenthal said: indigent clients and those with lower incomes but beyond poverty. "We need to make proposals directed at each." She and others mentioned that rules changes may help demystify the legal system or encourage lawyers to find new ways to provide basic services at lower costs.

Members all expressed an interest in conducting a public hearing to gather perspectives and experiences, with invited testimony.

Chief Justice Nathan L. Hecht noted that the Texas Supreme Court created the commission as a means to broaden legal

services for lower- and middle-income people who, evidence shows, too often have to go it alone, wait too long for a remedy, or give up on the system altogether.

The Commission will report proposals to the Supreme Court in November.

#### **RACER To Allow Access to Judges as early as June 2016**

Development on the new Remote Access to Court Electronic Records (RACER) system continues. Tyler Technologies is working to grant access to judges starting in early June. This tool will allow judges to see all electronically filed documents without needing access to the local case management system. While the tool is not meant to replace traditional electronic judicial tools, it will provide a very rudimentary judicial tool where there are none today.

Development will continue throughout 2016 with the goal of allowing the attorney of record access to eFiled documents at the end of this year.

#### **OCA evaluates needs through Equipment Loan Program**

OCA announced in March the new OCA Equipment Loan Program that would allow counties in need to get PCs and a server on loan from OCA to assist in the implementation of eFiling. At the end of the loan period, OCA will donate the equipment to the county for continued use. As of today, more than 40 counties have responded with a need. OCA will evaluate these needs and loan equipment based on the size of the county (less populous counties are given priority).

#### **Supreme Court issues Opinion on Clerk's bill civil filing fees**

On April 1, 2016, the Texas Supreme Court issued a new opinion addressing circumstances in which filing fees may be recouped from an individual who has filed an uncontested affidavit of indigency. The trial court temporarily enjoined the District Clerk of Tarrant County from billing parties who had filed uncontested affidavits of indigency. A divided court of appeals vacated the injunction and dismissed the case because the trial court had not rendered the judgments in the cases in which costs were billed. The Supreme Court reversed the judgment of the court of appeals and

remanded the case to the trial court for further proceedings.

In each of these divorce cases, the Petitioner had filed an uncontested affidavit of indigency. In each case, the divorce decree allocated costs, providing either that "costs of Court are to be borne by the party who incurred them" or that "Husband will for his court costs [and] the Wife will pay for her court costs." The decrees did not state the amount of costs due or that Petitioners were able to afford them. After entry of the decrees, each of the Petitioners received collection notices from the clerk which demanded, on average, about \$300 in court costs and fees. The Supreme Court overruled the 1982 per curiam opinion in *Evans v. Pringle*, and held that *Carey v. Looney* correctly interpreted what is now Section 65.023(b), Texas Civil Practice and Remedies Code.

The Supreme Court noted that both parties agreed that the District Clerk has a ministerial duty to bill costs as required by a judgment. Although the District Clerk argued that Petitioners' divorce decrees required them to pay costs, the Supreme Court held that the decrees only allocate costs between the parties to each case and that "for a party who files an affidavit of inability to pay costs, there are no costs to bill." The Supreme Court based this holding upon Rule 145 of the Texas Rules of Civil Procedure.

The Supreme Court noted that the District Clerk argued that because the Family Code provides courts with increased latitude to award costs, it is conceivable that a family court could order costs despite an affidavit of inability to pay. The Supreme Court responded to this argument by stating, "This argument flies in the face of our Constitution and case law. Rule 145 is but one manifestation of the open court guarantee that 'every person . . . shall have remedy by due course of law.'" The Supreme Court further stated, "It is an abuse of discretion for any judge, including a family law judge, to order costs in spite of an uncontested affidavit of indigence."

The District Clerk also argued that the injunction was overbroad because the district court enjoined the District Clerk from "continuing his policy of collection of court costs from indigent parties . .

. unless [the court makes a specific finding in accordance with Rule 145(d)]." The Supreme Court held that the injunction was proper and not overbroad, because it required the District Clerk to conform his actions to the law and did not restrain the District Clerk from any lawful activity.

#### **AG Opinion on Applicability of Article 45.0541 of the Code of Criminal Procedure Opinion No. KP-0073**

Re: Applicability of Expunction Orders Under Article 45.0541 of the Code of Criminal Procedure to Records in the Possession of a Juvenile

Probation Department as a Result of a Referral for Delinquent Conduct. (RQ-0057-KP)

On March 28, 2016, the Office of the Attorney General (AG) issued an opinion regarding the applicability of expunction orders under Article

45.0541 of the Code of Criminal Procedure to records in the possession of a juvenile probation department as a result of a referral for delinquent conduct as defined by Section 51.03(a)(2) of the Family Code. Under Section 51.03(a)(2), delinquent conduct includes conduct that violates a lawful order of a court under circumstances that would constitute contempt of that court. House Bill 2398 (84th Legislature, Regular Session) enacted Article 45.0541, C.C.P., entitled "Expunction of Failure to Attend School Records," which requires the expunction of the conviction or complaint and any records related to the conviction or complaint for a truancy offense under the former Section 25.094 of the Education Code, Failure to Attend School.

The request for opinion asked whether Article 45.0541 applied to juvenile court records and juvenile court proceedings, which are generally governed by the Rules of Civil Procedure rather than the Code of Criminal Procedure.

The AG determined that "an expunction order issued to a juvenile probation department under article 45.0541 of the Code of Criminal Procedure would likely apply to documents in the department's possession as a result of a referral to the juvenile court for delinquent conduct as defined by subsection 51.03(a)(2) of the Family Code."

The AG reasoned that the referral for



contempt and any juvenile records related to the referral, including the referral's disposition, constitute "related records," and, thus, are likely subject to expunction.

### WINGS Considers Next Steps

The Working Interdisciplinary Network of Guardianship Stakeholders (WINGS) group met on March 31, 2016. David Slayton provided updates on the guardianship registry and online guardianship training programs. Jeff Rinard gave a presentation on the OCA Guardianship Compliance Pilot Project. The Chair of each of the current WINGS workgroups gave an update concerning their workgroup's activities and developments in the areas focused upon by their workgroup. The WINGS group discussed issues arising from legislation from the 84th Texas Legislature. Judy Speer presented information to the group concerning an invitation for members of the WINGS group to participate in a forum in Houston and outlined the proposed new workgroup for outreach activities.

### Research & Court Services Spotlight—Data Quality Management

Data quality management incorporates a cycle of continuous analysis, observation, and improvement leading to overall improvement in the quality of information used to make decisions. The following resources may assist you in reviewing the data quality management cycle in your court.

#### *Data Quality Management for Courts*

This article presents a look at data quality management in Harris County with a focus on their transition to electronic records. The final point of the article is key to data quality management in the courts: "a consistent message from the court leadership team—judges, clerks of court, court administrators, managers, and supervisors—is required to initiate and sustain a high level of data quality."

Source: Court Statistics Project, Caseload Highlights—Notes from the Field

#### *The Role of Chief Data Officer in the 21st Century*

This article looks at the role of chief data officer from a corporate perspective but

a number of points are applicable to the courts. The following excerpt on the levels of data quality maturity may be helpful in assessing your court's data quality improvement activities.

Level 1: Uncertainty. The technicians in the organization stumble over data defects as their programs crash, or the business-people complain. There is no proactive data quality improvement process in place. Basically, the organization is asleep and doesn't want to be awakened.

Level 2: Awakening. A few isolated individuals acknowledge the dirty data and try to incorporate some data quality disciplines in their projects. However, there still is no enterprise-wide support for data quality improvement, no data quality group, and no funding.

Level 3: Enlightenment. The organization starts to address the root causes of its dirty data through program edits and data quality training.

A data quality group is created, and there is funding for data quality improvement projects. The data quality group immediately performs an enterprise-wide data quality assessment and institutes several data quality disciplines.

Level 4: Wisdom. The organization proactively works on preventing future data defects by adding more data quality disciplines to its data quality improvement program. Managers across the organization accept personal responsibility for data quality. Incentives for improving data quality replace incentives for cranking out systems at the speed of light.

Level 5: Certainty. The organization is in an optimization cycle by continuously monitoring and improving its data defect-prevention processes. Data quality is an integral part of all business processes. Every job description requires attention to data quality, reporting of data defects, determining the root causes, improving the affected data quality processes to eliminate the root causes, and monitoring the effects of the improvement. Basically, the culture of the organization changes.

Source: Cutter Consortium

#### *Improving Business Practices: Research & Lessons*

These presentation slides provide an overview of the Research Division

and Business Practice Unit of Hennepin District Court in Minnesota. In this all electronic court, the Business Practices Unit has the main purpose of identifying and reducing risk through data quality management. The presentation provides information on how the unit was formed, roles and responsibilities of the unit, and how the unit enhanced court operation outcomes.

Source: Presentation by Dr. Marcy Podkopacz & Dr. Matt Johnson, Fourth Judicial District of Minnesota, Hennepin County, at National Association for Court Management, 2016 Midyear Conference.

For additional information on this topic or to discuss how OCA can help you with data quality, please contact OCA's Scott Griffith, Director of Research and Court Services, or Amanda Stites, Research Specialist at (512) 463-1625.

### Justice for All Legislation

Senator John Cornyn (R-TX) and Congressman Ted Poe (R-TX) introduced the Justice for All Reauthorization Act (S. 2577/H.R. 4602) on February 24, 2016. The bill primarily devotes resources to exonerate those wrongfully accused, but would reinstate a mandatory consultation provision for the distribution of Byrne Justice Assistance Grant (JAG) funding by state criminal justice commissions. These commissions would be required to involve all stakeholders of the criminal justice system, including state courts, in the planning process before a statewide criminal justice plan is approved and resources from the Byrne JAG program are allocated to the states. The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators have expressed their support for this mandatory consultation provision (CCJ/COSCA Resolution 12-A-8). Senator Cornyn's staff will approach Judiciary Committee staff over the recess to try to schedule a hearing/markup when the Congress returns to session. This bill has bipartisan support with Senator Patrick Leahy (D-VT) joining Senator Cornyn as an original sponsor of the legislation.

Source: Washington Update, NCSC Government Relations Office

# PARALEGALS

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A paralegal may become, or may maintain his or her status as an associate member of the College by:

- (1) completing twelve hours of approved CLE in the current or preceding calendar year, including 2 hours ethics
- (2) paying the required fee,
- (3) submitting an application form on which a licensed Texas attorney verifies the applicant's good character and qualifications as a paralegal, and
- (4) submitting a report identifying the sponsor of the CLE programs attended, the specific topics included, the names and firms of speakers on the programs.

Two of the twelve hours, including one hour ethics, may be earned through non-accredited CLE and submitting the necessary information for each.

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# TEXAS

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# Scruples

## Avoiding the Appearance of Representing a Client

Ellen Lockwood, ACP, RP

**C**anon 1 of the Paralegal Division Code of Ethics and Responsibility states, in part, as follows:

A paralegal shall not engage in the practice of law as defined by statutes or court decisions, including but not limited to . . . appearing in a representative capacity in court or before an administrative or regulatory agency (unless otherwise authorized by statute, court or agency rules) . . . Code of Ethics and Professional Responsibility, Canon 1.

The canon cited above appears straightforward and easy to follow. However, paralegals should take care not to inadvertently give even the appearance they are representing a client.

A frequent question is whether a paralegal may attend a deposition without the attorney. This situation usually occurs in matters with numerous parties. Given the many depositions associated with those matters, an attorney may choose not to attend the depositions of witnesses who are less likely to have information important to the client's case. In that situation, the attorney may choose to have her paralegal attend the deposition to take notes and provide a summary of the examination. A paralegal may certainly attend the deposition without the attorney as long as the paralegal ensures all others attending the deposition understand that the paralegal:

- Is merely attending as an observer
- Is listed in the transcript as attending the deposition
- Is not representing the party represent-

ed by the law firm

- Is not defending the deponent
- Will not ask any questions
- Will not ask an attorney at the deposition to ask any questions
- Will not raise any objections or make any agreements on behalf of the party represented by the law firm or the deponent
- Will not ask an attorney at the deposition to raise any objections or make any agreements on behalf of the party represented by the law firm or the deponent

Another situation that can lead to a misunderstanding about the paralegal's role is a docket call or other similar situation. Some attorneys are under the impression that if the court appearance does not involve making legal arguments or presenting evidence, a non-attorney may appear instead of the attorney. Unfortunately, this is not the case.

Appearing before a judge or court, even without the attorney's client, is technically still acting as the client's legal representative. Therefore, even announcing "ready" or "present" crosses the ethical line.

If a paralegal is attending a hearing or docket call with the attorney and the attorney has stepped out when the case or attorney is called, the paralegal may advise the court that she is the attorney's paralegal and the attorney has left the courtroom for a moment. The paralegal should then follow the court's instructions to either fetch the attorney or let the court know when the attorney has returned. If the court requests that the paralegal provide the response for the attorney, the paralegal should respectfully decline and

politely state that the attorney will need to provide that information. Even if the paralegal knows the answer, and the court is requesting the paralegal provide the answer, the paralegal should inform the court that she does not have that information and repeat that the attorney will need to provide the answer. Although the court is requesting the paralegal provide the requested information, doing so is still an ethical violation and may give the appearance that the paralegal represents the client. Of course, this assumes that the attorney recognizes the limitations on the information a paralegal may provide to the court in that situation.

Although it may appear obvious to the paralegal that she is not appearing in a representative capacity at a deposition, hearing, docket call, or other situation, that is not the standard. Paralegals must take extra precautions to be certain others understand her role in the proceeding.



*Ellen Lockwood, ACP, RP, is the Chair of the Professional Ethics Committee of the Paralegal Division and a past presi-*

*dent 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 Thomson Reuters. You may follow her at [www.twitter.com/paralegaethics](https://www.twitter.com/paralegaethics) and she may be contacted at [ethics@txpd.org](mailto:ethics@txpd.org).*



# Volunteer Paralegal

TEXASLAWHELP.ORG

## Job DESCRIPTION

*Volunteer remotely from your home, office, or anywhere  
with an internet connection.*

### OVERVIEW

Texas Legal Services Center (TLSC) is a non-profit law office that provides free legal services to low-income Texans. TLSC manages TexasLawHelp.org, a statewide website that provides free and reliable legal information and resources. In 2015, more than 1.2 million unique people visited TexasLawHelp.org, and over 6,500 visitors received free navigation assistance.

### HOW YOU CAN VOLUNTEER

#### [Website Navigation \(LiveChat Representative\)](#)

Over instant chat, Volunteer Paralegals can directly help website visitors navigate the website and find the correct information and resources for their individual legal issue. LiveChat software training is simple and will be provided at no cost to volunteers. Legal advice would not be provided by Volunteer Paralegals. Volunteers may work for two to 3 hours per session.

### QUALIFICATIONS

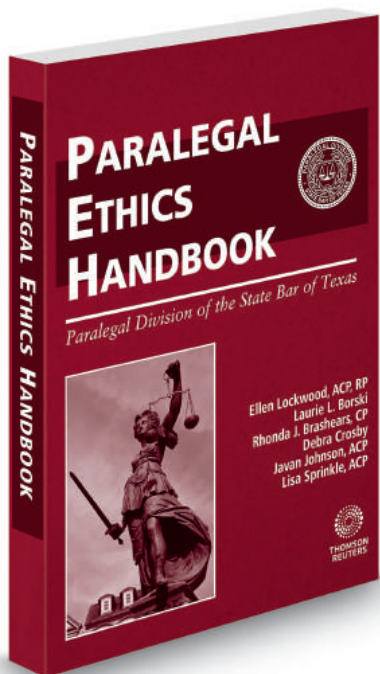
- Experience or training as a paralegal
- Interest in helping low-income Texans
- A stable Internet Connection

### BENEFITS

- The Volunteer Paralegal will collect pro bono hours for all time spent volunteering.
- Membership to Pro Bono College (recognition by the State Bar of Texas and other benefits) upon completion of 50 pro bono hours.
- Possible course credit (for paralegal students) and networking opportunities.
- Flexible scheduling and the ability to volunteer remotely.
- Guaranteeing that low-income Texans are gaining access to the legal system with correct information and referrals.

The TexasLawHep Volunteer Program is made possible by a grant from the State Bar of Texas Corporate Counsel Section. The Texas Access to Justice Foundation provides support as well.





# PARALEGAL ETHICS HANDBOOK



*Paralegal Division of the State Bar of Texas*

By: Ellen Lockwood, ACP, RP  
Laurie L. Borski  
Rhonda J. Brashears, CP  
Debra Crosby  
Javan Johnson, ACP  
Lisa Sprinkle, ACP

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The Paralegal Ethics Handbook is a resource for all paralegals that addresses ethical considerations for 17 practice areas as well as considerations for in-house, corporate, freelance, administrative, governmental, and regulatory law paralegals.

This title:

- Examines such topics as defining ethics, ethical obligations, and remaining ethical
- Addresses ethical considerations for e-filing, e-discovery, and technology
- Provides resources for state information and paralegal association ethics cannons and related information
- Contains rules and regulations for all 50 states and Washington, D.C.
- Explains how to determine whether an action may be an ethical violation



## In Memoriam



**H**olly Smith Huckabee, Director, District 1, recently passed away near Lockhart. Holly was board certified by the Texas Board of Legal Specialization and a member of the Houston Metropolitan Paralegal Association, Holly worked for John K. Grubb & Associates at the time of her death. We appreciate her contributions to the paralegal profession and to her community.

In honor and tribute to those PD members who have passed away, the TPJ will have a “Memorials Section” in the Summer TPJ. Information included is primarily related to the individual’s accomplishments in the legal profession. To submit a memorial, please send a request for a Memorial Questionnaire to [president@txpd.org](mailto:president@txpd.org) and type “Memorial Submission” in the subject line.

The Paralegal Division is celebrating 35 years  
this year, be watching for special events  
in your District.



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## 2016–2017 BOARD OF DIRECTORS



*Seated-left to right: Mary Wintermote; Mona Hart-Tucker, ACP; Megan Goor, TBLS-BCP; Jay M. Williams, TBLS-BCP; Stephanie Sterling, TBLS-BCP.*

*Back row, left to right: Rebecca Lopez; Javan Johnson, ACP, TBLS-BCP; Kimberley Fox, ACP; Jennifer Barnes, CP; Susan Wilen, RN; Janet McDaniel, CP; Holly Huckabee, TBLS-BCP; Edna Garza, TBLS-BCP. Not pictured: Michelle Beecher and Shandi Howard, CP.*

## 2016–2017 EXECUTIVE COMMITTEE

### MEGAN GOOR, TBLS-BCP



**President**  
Megan is the Senior Paralegal and Office Manager of The Brender Law Firm, located in the medical district

of Fort Worth. She has worked for 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. Megan's experience at The Brender Law Firm includes handling personal injury, product liability, insurance bad faith, criminal, civil rights, probate, medical negligence, mass torts, class actions, sexual harassment, and employment discrimination cases from intake through trial and appellate litigation.

Megan is a board certified paralegal in Personal Injury Trial Law by the Texas Board of Legal Specialization (2008).

Megan 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 has recently served as PD Parliamentarian (2014–2015), Board Advisor for the PD's Pro Bono Committee, and Liaison to the Texas Young Lawyers Association. She is a former Board Advisor-Annual Committee; former Board Advisor-Vendor Liaison; and former Liaison-ABA. Megan currently serves as the Fort Worth Paralegal Association's Professional Development Chair and formerly as the SBOT Liaison to the PD. Megan was recently awarded the Fort Worth Paralegal Association's Paralegal of the Year 2014 Award.

Professional affiliations: Active Member of the Paralegal Division of the State Bar of Texas, Active Member of the Fort Worth Paralegal Association; member of The College of the State Bar of Texas; Paralegal Affiliate Member of AAJ; and an Associate Member of the Tarrant County Bar Association.

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

### MONA HART-TUCKER, ACP



**President-Elect**  
Mona Hart-Tucker, ACP, has been a member of the Paralegal Division since 2001 and is currently serving

as 2014–2016 District 14 Director of the Paralegal Division. She has previously served as Paralegal Division Director for District 14 for the term years 2004–2006, 2006–2008, and 2012–2014.

Mona works as a contract paralegal in the civil litigation field. She has previously worked in the oil & gas, real estate, and estate planning & probate areas of law.

Mona graduated *cum laude* from East Texas Baptist University in Marshall, and while there, also obtained her formal paralegal education in ETBU's ABA-accredited program. She earned her Certified Paralegal credentials from NALA in 2001, earned the Advanced Certification in Trial Practice in 2009, and Advanced

Certification in Discovery in 2012. She was selected as a member of NALA's inaugural LEAP class.

An avid amateur genealogist, Mona enjoys research and "dead ancestor hunts." She currently serves as President of the Trevat Cemetery Association in Trinity County. Mona and her husband Lonnie live in Daingerfield.

## JAY M. WILLIAMS, TBLS-BCP



**Treasurer,  
District 2  
Director**

Jay M. Williams, TBLS-BCP is a paralegal with Langford Wise & Farahmand, PLLC. Jay received

his paralegal certificate from ESS College of Business in Dallas in September 1990 and began his legal career at the Federal Public Defender's Office in Fort Worth in December 1990. Since then he has accumulated a diverse legal background, gaining experience in federal criminal defense, real estate, tax, wills and estate planning, mergers and acquisitions, employment, probate, business and commercial litigation, bankruptcy, and homeowners' association representation. Since 2000, Jay has focused his career on plaintiff personal injury litigation cases.

Jay joined the Dallas Area Paralegal Association (DAPA) and was appointed Professional Development Director in 2004. He was reelected Professional Development Director for the 2005 term, and then took over as Programs Vice President. Jay was then elected to a full term as Programs Vice President in 2006, and elected President-Elect in 2007. In 2008, Jay had the honor and pleasure to serve as President of DAPA. He then served again as Programs Vice President in 2010. Jay has served on numerous committees, including the Holiday Lunch Committee in 2005–2008 (Chair in 2005 and 2006),

the Paralegal Day Celebration Committee in 2006–2008, 2010–2012, and 2014–2016 (serving as emcee for the 2010 and 2011 events), a member of and emcee/speaker at the Career Day Event in 2007, speaker at the 2013 and 2016 Career Day Events, and a member of the Elections, Rules & Bylaws, NFPA Committees, and the NFPA Convention Planning Committee for the 2014 NFPA Convention. He also participated in Dallas Volunteer Attorney Program Pro Bono clinics from 2005–2007, and beginning again in 2015 to present. In 2008, he spearheaded the first Joint CLE Event with the North Texas Paralegal Association and returned in 2016 to revamp the event to include collaboration with the Paralegal Division of the State Bar of Texas. Jay was awarded DAPA's Michele M. Boerder Lifetime Achievement Award in 2015.

Jay was a member of the Paralegal Division of the State Bar of Texas from 2005–2007, and rejoined the Division in 2012. He served as Public Relations Committee Sub chair, Co-Chair of the 2013 Annual Meeting Committee, and Chair of the Professional Development Committee in 2013–14. He was elected District 2 Director in 2014 and 2016, and was elected to serve as Treasurer in 2015 and 2016. Jay became a Board Certified Paralegal in Civil Trial Law through the Texas Board of Legal Specialization in 2013, and in Personal Injury Trial Law in 2015.

Jay has served in various capacities in the National Federation of Paralegal Associations (NFPA), including member of the Legislative Committee 2007, Legislative Coordinator 2008, 2011, Budget Committee member 2010–2012, and Legislative Review Committee member 2014–2016. In July 2009, he was voted to fill the unexpired term as Vice President and Director of Profession Development in 2009. Jay has also been a member of the American Association for Justice (formerly American Trial Lawyers Association) since 2005.

Jay is an avid bowler and sings at various opries and clubs around the Dallas area. He dutifully supports his husband Ken with the Classic Chassis Car Club of Dallas.

## MARY WINTERMOTE



**Secretary,  
District 3  
Director**  
**M**ary R. Wintermote is a senior litigation paralegal in the Fort Worth office of Cotten Schmidt &

Abbott, LLP. Mary's work as a paralegal spans more than 23 years with an emphasis on civil trial practice in the areas of complex personal injury and wrongful death cases nationally involving theories of premises liability, products liability, and medical malpractice. Mary also serves as liaison to several of the firm's major clients and assists with technology training at the firm's offices in Fort Worth and New Orleans.

Mary received her legal assistant certificate from the University of Texas-Arlington in 1991 and previously attended Pennsylvania State University and Harrisburg (PA) Area Community College. Prior to that time, Mary worked in the public safety and emergency management fields in Pennsylvania eventually moving to Texas in 1989.

Mary is a member of the Fort Worth Paralegal Association and serves as its Litigation Specialty Section Chair. She is also a member of the Dallas Area Paralegal Association. Mary has been a member of the Paralegal Division of the State Bar of Texas since 2013 and served as Elections Sub-Chair, Volunteer Coordinator, and CLE Committee for District 3.

Mary and her husband, John, live in Arlington. They have two children, Katharine and Joseph, 4 rescue dogs and 1 cat. She has a variety of hobbies and enjoys volunteering for several civic and charitable organizations in the Dallas/Fort Worth area.

## STEPHANIE STERLING, TBLS-BCP



### Parliamentarian, District 4 Director

Stephanie is a seasoned litigation paralegal with 18 years of experience. She is with the law firm of DuBois,

Bryant & Campbell, LLP in Austin in the practice area of civil litigation handling complex commercial litigation matters. Stephanie became a Board Certified Paralegal in Civil Trial Law through the Texas Board of Legal Specialization in 2015. She earned her Associate of Applied Science Degree in Paralegal Studies with honors from Lamar University (an ABA approved program) and went on to graduate with a Bachelor's of Science Degree in History with honors from West Texas A&M University.

Stephanie has been a Paralegal Division voting member since 2003 and was elected as District 4 Director in 2014. In addition to being District 4 Director, she is currently serving the Paralegal Division as

Parliamentarian for 2015–2017. Stephanie is also a member of Capital Area Paralegal Association (CAPA), the Texas Bar College, and Women in eDiscovery—Central Texas Chapter as well as NALA—The Paralegal Association. Stephanie also currently serves as CAPA's Public Relations Chair (2014–present).

Stephanie has served the paralegal profession in many capacities over the years. She has served the Paralegal Division as District 4's Public Relations Committee Sub-Chair (2009–2013), Pro Bono Ad Hoc Committee Sub-Chair (2009–2014), Professional Development Committee Sub-Chair (2014–2015), and served as Marketing Chair on the TAPS 2014 Planning Committee. Stephanie has also served CAPA in many board positions and committee roles over the years such as President, President-Elect, Immediate Past President & Board Advisor, Ethics Officer, NALA Liaison, TAPA Liaison, Public Relations Liaison, Sustaining Member Liaison, Pro Bono Service Award Chair, Paralegal of the Year Award Committee Chair, and served on CAPA's 35th Anniversary Planning Committee leading two sub-committees as well as served as a committee member on the Publications Committee, Web Team, and CLE Seminar Committee. She has also authored several

guidelines and committee procedures for CAPA. Stephanie has served as an ex officio member and CAPA representative of the Austin Bar Association and has served on the Virginia College at Austin's Paralegal Studies Advisory Board.

Stephanie was CAPA's Paralegal of the Year in 2013, Volunteer of the Year in 2011 and again in 2014. She was also awarded with the NALA Affiliates Award in 2013 for her contribution and dedication to the advancement of the paralegal profession.

Stephanie has been married to Clint for 24 years and they have 1 child, Caleb, who is 15. She has also volunteered with her local PTA organizations and has served as the Legislative Action Chair for her son's middle school PTA as well as served the elementary school PTA as Website Coordinator for 3 years, Legislative Action Coordinator for 2 years, Homeroom Mom for 2 years and during this time, the Texas PTA recognized her local PTA with the Gold Achievement Award in the categories of Website and Legislative Action. She has also been a teacher and leader for AWANAs for 3 years. Stephanie enjoys reading, studying martial arts, attending Zumba classes and participating in various 5Ks and obstacle races. She also enjoys hiking and biking the various trails of Central Texas in her free time.

## Officers and Executive Council

(Bios can be found online under the contacts tab)

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Parliamentarian and District 4  
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Jay M. Williams, TBLS-BCP  
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Stephanie Sterling, TBLS-BCP  
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District 11 Director  
Midland, TX

Michelle Beecher  
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Javan Johnson, ACP, TBLS-BCP  
District 14 Director  
Longview, TX

Edna W. Garza, TBLS-BCP  
District 15 Director  
McAllen, TX

Rebecca Lopez  
District 16 Director  
El Paso, TX



# Annual Meeting Luncheon Recap



We were fortunate to be able to start the year off in Fort Worth at the Annual Meeting. Although the Silver Fox wasn't the typical meeting venue, they came through well above expectation not only with the wonderful food and great service but they opened their restaurant specifically for us. Shawn Tuma, the keynote speaker, enlightened us with timely information on cybersecurity and how we, as paralegals, can provide a great amount of value to the attorneys and our clients by being able to act like a first responder when an information crisis arises. If you couldn't attend, Mr. Tuma publishes a blog with a lot of good information on it (<https://shawnetuma.com/>) With the theme of the luncheon being first responders, donations were taken at the sign-in table which would be provided to a rural fire station to help defray their costs and purchase things they need. We collected \$100 which will be presented to the Burleson Fire Department along with the fire trucks, police cars and various other toys that were used as centerpieces during the luncheon.

The work and planning for the luncheon begins almost a full year before the event. The Committee is charged with developing

the theme for the event, securing the venue and vendors, and organizing every aspect of it. An enormous amount of thanks goes to Katrina Lea, who served as Annual Meeting Chair, and her committee of Julie Sherman, Debbie House and Susan Davis. Finally, the Annual Meeting Luncheon saw the end of the term for President Erica Anderson, and several Directors who have worked long and hard for their members. With the exit of one President comes the installation of another when Megan Goor, TBLS-BCP accepted the gavel to serve as 2016–2017 President. The job of the President is daunting and requires devotion, time commitment and a lot of understanding from their employers and families—and it's all as a volunteer! Megan has a vibrant vision for the Paralegal.

Following the luncheon, the Board returned to the Sheraton hotel where a New Director Orientation was held that afternoon and into the evening. The orientation also serves as a refresher for the current Directors. On Saturday, the Incoming Board of Directors meeting took place. Despite it being work, we have an added benefit to be able to work alongside colleagues for the betterment of the Division and profession.

## Rachael Watson, District 3, 2016 recipient of the Paralegal Division's Exceptional Pro Bono Award

In 1996, the Exceptional Pro Bono Service Award was created by the Board of Directors to promote the awareness of pro bono activities. To encourage Division members to volunteer their time and skills to pro bono projects within their community by recognizing a Division member who demonstrates exceptional dedication to pro bono projects, provides assistance to established pro bono projects, and assists attorneys in providing legal services.

Attorney Alison Bedore has worked with Rachael Watson on dozens of pro bono cases (family and criminal), many active duty military. Ms. Bedore stated: "Ms. Watson has been a paralegal for 4 years and continues to make great strides



in her efforts to help attorneys across the state and the *pro se* litigants who are in dire need of assistance. She has been a member of the American Legion Auxiliary for quite some time and often comes across someone with military background or serving actively needing legal assistance." Ms. Watson is also a very active member in her community working with veterans, active military and military families with food drives, blood drives and school supply drives for military children. Ms. Watson believes that, "serving those who are defending our freedom is the least 'we' can do together to help make a difference." Congratulations to Rachael Watson!

## Award of Excellence

Javan Johnson, ACP, TBLS-BCP, currently Director for District 14, was awarded the PD's award of highest honor, the 2016 Award of Excellence, by the Board of Directors of the Paralegal Division at the 2016 Annual Meeting, held in June in Fort Worth. The 2015–2016 President of the Paralegal Division, Erica Anderson, ACP, shared heartfelt praises when she presented this award to Javan, who was genuinely surprised.

The Award of Excellence, by definition, is an award conferred by the Board of Directors of the Paralegal Division to recognize an individual who has made a substantial contribution to the paralegal profession. The award is given for outstanding merit and is not required to be conferred annually.

Javan received this award because of her extensive and unrelenting involvement with the Paralegal Division Coordinator Transition Committee. With the retirement of Norma Hackler announced last year, a PD Coordinator Transition Committee was put into place. Norma Hackler had served as PD Coordinator for 25 years. The Committee was charged with



an unprecedented task to lay the groundwork and the implementation of the transition of the PD Coordinator.

Javan Johnson, ACP, TBLS-ACP, is a Charter Member of the Paralegal Division. She has served PD for two terms as President (2000–2001; 2006–2007), a member of the Board of Directors, Membership Committee Chair, Public Relations Committee Chair, the Texas Advanced Paralegal Seminar Planning Committee, as well as many other positions. She is a co-author of the

*Paralegal Ethics Handbook*. She has previously been honored with the Award of Excellence (2004) for her volunteer efforts with the PD. She is a frequent speaker for PD on ethics and numerous civil trial and personal injury topics. She currently serves as the Director for District 14, and is serving as a Mentor for PD Protégés.

Javan owns Professional Paralegal Services, a freelance paralegal service which opened in February 1999. She specializes in civil trial and personal injury litigation. She received a Bachelor's Degree in Business Administration and Education from Baylor University. Javan obtained her Certified Paralegal (CP) from the National Association of Legal Assistants in 1990, earned the NALA Advanced Civil Litigation specialty designation in 1993, and became certified in Civil Trial Law by the Texas Board of Legal Specialization in 1996.

Javan is devoted to the paralegal profession and educating paralegals all over the State. She is also a charter member of the Northeast Texas Association of Paralegals, Inc. in Longview and has served that organization in numerous positions.



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In 2017, the Paralegal Division is sponsoring a trip in conjunction with ACIS and traveling to LUCERNE, Switzerland. The detailed itinerary and pricing for the 2017 trip, can be found on the PD website home page at <http://txpd.org> under NEWS—PD 2017 Trip to Switzerland.

Friends and family are welcome to travel with the group.





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