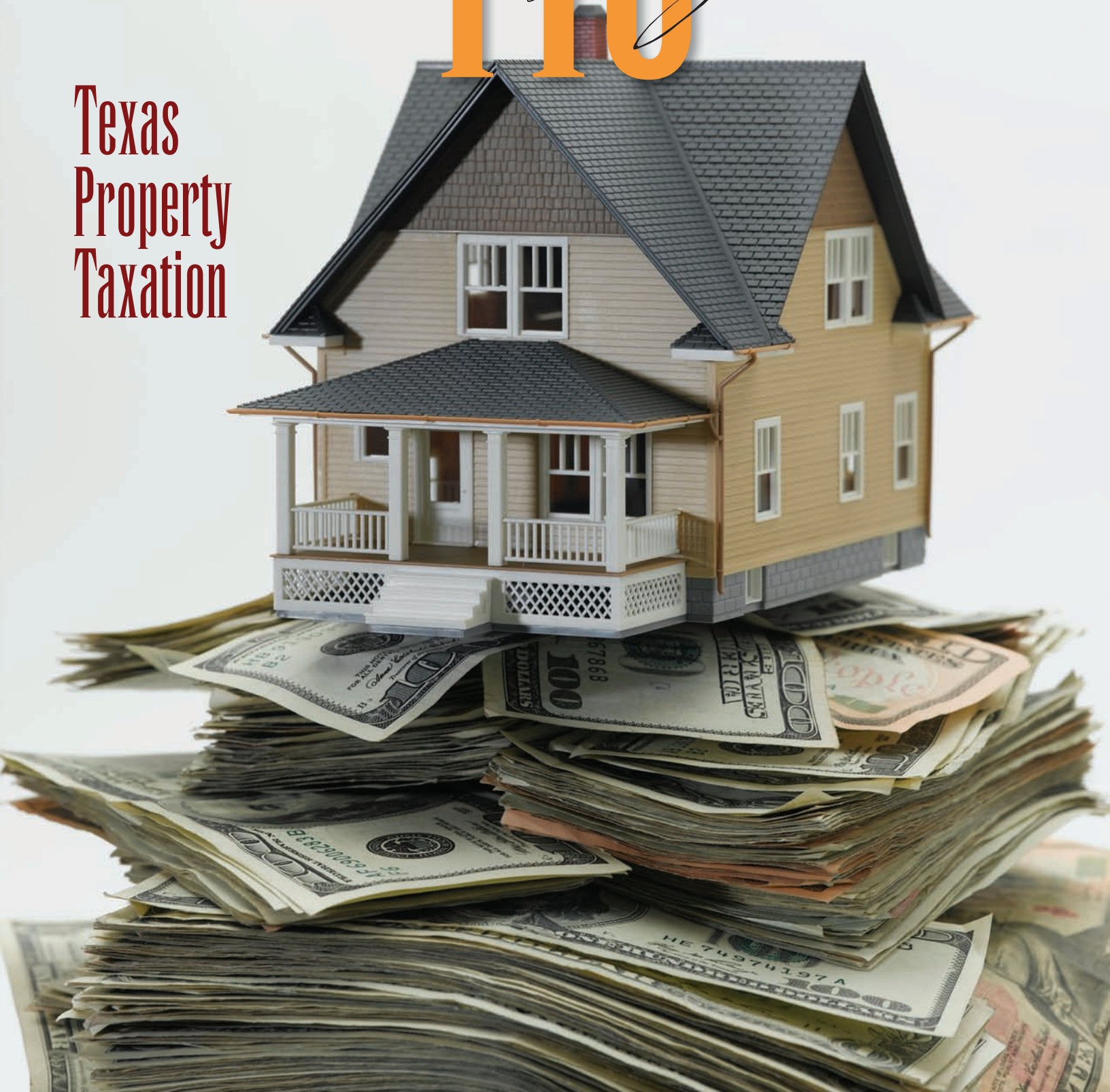


WINTER 2017 VOL. 22 NO.3

TPIJ

*Texas Paralegal Journal*

Texas  
Property  
Taxation





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# PRESIDENT'S *Message*

Megan Goor, TBLS-BCP

**F**irst, I would like to share with you the many things the Division has been working on as we approach the half-way mark of this term!

## *President's Challenge is in full force!*

If you know of anyone who is still unsure if they want to join, please show them the "President's Challenge" flyer also contained in this edition and encourage them to start their membership today at half-price! You could be eligible to enter the \$500.00 drawing! The challenge runs until February 25, 2017. Go to the Division's website ([www.txpd.org](http://www.txpd.org)) for more information.

## *TAPS 2016—Journey to Excellence!*

The Division's 35th Anniversary was recognized at TAPS at the beautiful historic Sunset Train Station in San Antonio. Please read the article featured in this edition and see the wonderful photographs of the event. Immediate Past President/TAPS Chair, Erica Anderson, had a vision for the Division to give back. During TAPS, the Planning Committee not only volunteered at the San Antonio Food Bank, but attendees raised enough funds to provide for 17,000 meals!

## *Texas Paralegal Day*

We are so fortunate to have the long-standing support of the State Bar. State Bar President, Frank Stevenson, attended District 2's Paralegal Day event and State Bar President-Elect, Tom Vick, attended District 3's Paralegal day event. There were so many exciting Paralegal Day luncheons this year honoring our 35th Anniversary. There were also special 35th Anniversary appreciation gifts. (See article.)

## *State Bar Update*

The Division had an article featured in the October *Texas Bar Journal* and the Division was also mentioned in the December *Texas Bar Journal*! At the last

Council of Chairs, the Division was requested to do a presentation to the Section Chairs. It was impressed upon them how paralegals can be even-more effective in today's changing legal field. We offered our support to be a liaison or representative on projects. In that regard, the Computer and Technology Section requested our assistance on an upcoming attorney-paralegal project! We also proposed that lawyers support the membership of their paralegal with the Division.

## *PD Online Store*

For members to "represent," we have designed and created the PD online store. This not only includes Paralegal Division merchandise, but also our 35th Anniversary merchandise which is available through June. (<http://www.cafepress.com/paralegaldivision>)

## *Texas Paralegal Journal*

The *TPJ* is ever increasing in content and with exciting features for the digital version. The summer *TPJ* will feature a "Memorials" section. If you would like to make a submission, please e-mail me ([president@txpd.org](mailto:president@txpd.org)) and put "Memorial Submission" in the subject line. The summer *TPJ* will also feature a "100 PD Club" section for those firms who have 100% PD enrollment. If you would like to submit your firm, please e-mail me ([president@txpd.org](mailto:president@txpd.org)) and put "100 PD Club Questionnaire" in the subject line.

These are just the highlights. The Board, Chairs, and volunteers have been enthusiastically working in the background to make sure the Division is continuing



to progress with great strides.

## *Happy New Year!*

"Your license and insurance, ma'am," are the words I heard one early morning as I was trying to rush my sons to before school athletic practice. What a way to start the New Year, I kept sourly thinking—here is another bill to budget, how am I going

to make time for defensive driving, and my insurance rate is probably going to go up. Nevertheless, the quarter-mile stretch of road that is 30 mph and turns into a 20 mph school zone at the magical time of 7:00 a.m. had my name on it. I swear my clock said 6:50 a.m. Shortly thereafter, several of my sons' teammates, whose parents had been fortunately forewarned not to speed because of the flashing lights on the deputy's patrol car illuminating the neighborhood, drove by us slowly and snickering. This was the ultimate embarrassment for my teenagers. Post-holiday schedules can make us even busier sometimes and, along with it, as in my case, post-holiday stress. Rushing and trying to get the boys to either early morning practice (7:15 a.m.) or extremely early morning practice (6:15 a.m.), after school practice, games, and of course, fitting in work, and then, having the underlying fear that I am going to leave a son forgotten somewhere being a constant. For many of us, these types of issues are the "usge." Of course, the deputy did not know or want to know how many minutes his watch was off, about any details of my life's woes, or care that I was the Paralegal Division President and avoided talking to me at all costs.

*(Continued on page 5)*

# TPIJ

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# EDITOR'S *Note*

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

If anyone has been keeping count, this issue includes what we believe is the 60th ethics article submitted by Ellen Lockwood, ACP, RP. (Do your own math for how many years that is—I'm not going there!) The *TPJ* is fortunate to have published so many of her articles. Ms. Lockwood is a bright star in our profession, and thankfully she shares her wisdom with all of us. Not only is her column one of the most popular each issue, but it is the most often requested for reprints. Ms. Lockwood likely does not have time to toot her own horn; she is too busy *doing* something. She is an inspiration.

I hope you are enjoying the expanded contents the digital version of the *TPJ* allows us to produce. The downside to that is, we need contributions more than ever! If you know an attorney who recently wrote or presented a paper, please ask them to consider submitting it for publication in the *TPJ*.

This issue contains lots of great information in the family law as well as properly law areas as well as other important information. I hope it is as educational to each of you as it has been for me.

**CORRECTION:** In the Fall issue, the firm name where paralegal Mary Wintermote (PD District 3 Director and Secretary) works was incorrectly spelled. We apologize to the fine folks at Cotten, Schmidt & Abbott LP in Ft. Worth. We know the support of our employers is a key factor in the PD's success!



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DEADLINE FOR SPRING ISSUE IS MARCH 5,  
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Inclusion and editing of material submitted is  
at the discretion of the editor and the editorial  
subcommittee.

# NOTICE OF NOMINATIONS/ELECTION OF PRESIDENT-ELECT

Pursuant to Standing Rule XIV of the Paralegal Division of the State Bar of Texas, notice is hereby given of an election for the office of 2017–2018 President-Elect. This election will be held by electronic mail during the month of January 2017 by the Board of Directors.

Qualifications for serving as President Elect of the Paralegal Division are contained in Standing Rules XIV as follows:

## XIV. OFFICERS

### B. ELIGIBILITY

1. Any current or past Director who is currently an active member of the Division and who has completed at a minimum a full term (two (2) consecutive years) as Director is eligible to be elected as President or President-Elect.

Any qualified individual who is interested in running for office of President-Elect should forward a one-page resume, together with a letter of intent to run, to the nominations committee chair at the following electronic mail address **TO BE RECEIVED NO LATER THAN JANUARY 13, 2017.**

Michelle Beecher  
Chair, President-Elect Nomination Committee  
Alagood Cartwright Burke PC  
319 W. Oak Street  
Denton, TX 76201  
940.891-0002 (o)  
mbeecher@dentonlaw.com

Note: In the event the Board of Directors of the Paralegal Division elects an individual who is currently serving as a Director, a vacancy will be declared in the district in which that individual serves. An election will be held to replace the outgoing Director (President-Elect) at the time the elections for the Board of Directors are regularly scheduled.

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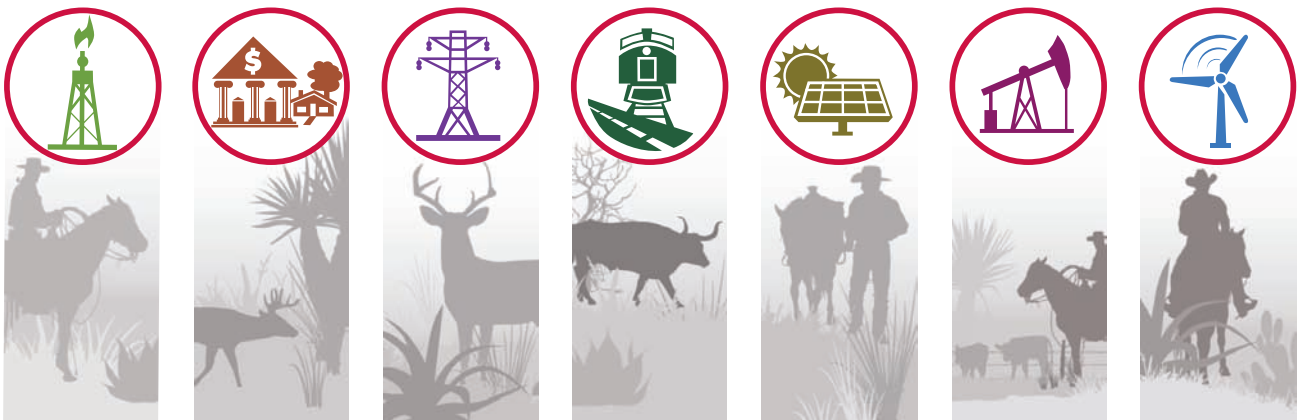


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# PARALEGAL DIVISION

## Notice of 2017—District Director Election

The Paralegal Division's DIRECTOR ELECTION for District Directors in odd-numbered districts (Districts 1, 3, 5, 7, 11, and 15) will take place **March 24 through April 7, 2017**.

- Beginning on **January 31, 2017** each Elections Subcommittee Chair will prepare and forward, upon request, the following materials to potential candidates for director in their respective district at any time during the nominating period:
  - a. A copy of the List of Registered Voters in candidates' respective district;
  - b. A sample nominating petition; and
  - c. A copy of Rule VI of the Standing Rules entitled "Guidelines for Campaigns for Candidates as Director."
- Each potential candidate must satisfy the following requirements:
  - a. Eligibility Requirements. The candidate must satisfy the eligibility requirements of Article III, Section 3 and Article IX, Section 1 A and Section 4 of the Bylaws and Rule V B, Section 5c of the Standing Rules.
  - b. Declaration of Intent. The candidate must make a declaration of intent to run as a candidate for the office of director through an original nominating petition declaring such intent that is filed with the Elections Subcommittee Chair in the candidate's district pursuant to Rule V B, Section 5 of the Standing Rules.
  - c. Nominating Petition. The original nominating petition must be signed by the appropriate number of registered voters and must be submitted to the Elections Subcommittee Chair in such district, on or before **February 22, 2017**.

If you are interested in running for District Director, or need further information regarding the election process, contact the Elections Committee Sub-Chair in your District, or the Elections Chair, Clara Luna Buckland CP, at [Elections@txpd.org](mailto:Elections@txpd.org).

### 2016–2017 District Election Committee Sub-Chairs:

District 1—Eugene Alcala, [eugenealcala@outlook.com](mailto:eugenealcala@outlook.com)  
District 3—Susan Davis, [susandavisdp@gmail.com](mailto:susandavisdp@gmail.com)  
District 5—Brenda Key, [brendakey@iheartmedia.com](mailto:brendakey@iheartmedia.com)  
District 7—Mary Mitchell, [mary.mitchell@uwlaw.com](mailto:mary.mitchell@uwlaw.com)

District 11—Janet McDaniel, CP, [District11@txpd.org](mailto:District11@txpd.org)  
District 15—Criselda Bernal-Moncayo, [cris.moncayo@yahoo.com](mailto:cris.moncayo@yahoo.com)

### NOTICE OF VOTING—March 24–April 7, 2017

All Active members of the Paralegal Division in good standing as of March 24, 2017 are eligible to vote. **All voting must be completed on or before 11:59 p.m., April 7, 2017.**

All voting will be online and no ballots will be mailed to members.

Please take a few minutes to logon to the PD's website and cast your vote for your district's director. The process is fast, easy, anonymous, and secure.

- Between **March 24th and April 7, 2017** go to [www.txpd.org](http://www.txpd.org)
- In the Members-Only section, click on "Vote"
- Follow the instructions to login and vote

*(Continued from page 1)*

However, as he walked back to my car to return my license and insurance, I guess the fatigued and anguished look I had on my face as he shone his flashlight on me made him think twice and he compassionately smiled, gave me a polite warning and said, "Happy New Year." I was in shock and as the wave of relief and gratitude washed over me, I realized I needed to have a new approach to my "usage."

So, YES, "Happy New Year!" This is the time to start anew, let any negativity from the previous year roll off your back,

do not let any obstacles get in your way, let this year be bright and celebrate each and every day!

Did you know that, this year, January is also the month of Chinese New Year? It is an elaborate two-week celebration and it is tradition to sweep and clean your house, have specially prepared celebratory foods, and wear nice clothes, so your soul can become "anew." Ironically enough, this is the Year of the Rooster, which is credited with characteristics of loyalty and, of all things, punctuality!

In looking ahead at the Division's

New Year, the Division will be traveling to Lucerne, Switzerland this spring, from April 21–29, 2017. Please visit the Division's social media websites for photographs and posts about this exciting trip! We also have Annual Meeting in Dallas on June 22–23, 2017 and TAPS in Addison on October 4–7, 2017! Save the dates and I hope to see you there!

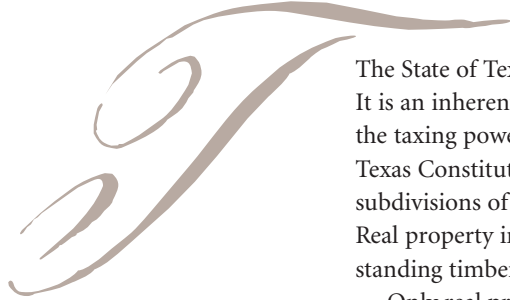
Thank you for being a member and many thanks to the many hands who help keep the Division flourishing!

Happy New Year and Gong Hey Fat Choy!—Megan



# Texas Property Taxation

By R. Scott Alagood



The State of Texas' power to tax does not come from the U.S. or Texas Constitution. It is an inherent power associated with the sovereignty of the state. On the other hand, the taxing power of Texas counties, cities, and school districts is solely derived from the Texas Constitution, statutes, and municipal charters. The Texas Tax Code grants these subdivisions of the state the authority to tax all real property located within the state. Real property includes land, improvements, mines, quarries, minerals in place, and standing timber.

Only real property located within the jurisdiction of a particular taxing unit as of January 1 is taxable by that unit for that tax year. The tax on real property is primarily based upon the market value of the property as of January 1 of a particular tax year. Market value is determined by using generally accepted appraisal methods and techniques which are supposed to be consistent in appraising the same or similar kinds of property. Each property must be appraised in light of the specific individual characteristics that affect market value, and appraisal process must consider all available evidence in determining a property's market value.

Typically, sales of nearby residential property will be used to determine comparable property values in the appraisal process using the market data method. These sales, which may even include certain foreclosure sales and properties located in a declining market, must have occurred within 24 months, and should have similar locations, square footages, ages, conditions, access, amenities, views, occupancy, easements, deed restrictions, and other benefits and burdens which may affect marketability. In counties with a population of at least 150,000, sales must have occurred within 36 months and be adjusted to account for changed market conditions.

In most situations, the chief appraiser of the taxing district is required to send each property owner a notice of appraised value for homestead exempted property on or before April 1, and for other properties on or before May 1. This notice must accompany a copy of a notice of protest form and instructions on completing and mailing the form to the appraisal review board to request a hearing. If the taxing district fails to provide any required notice to the taxpayer, the taxpayer's due process rights are violated, and any appraisal or tax assessed on the property is void. It should be noted that "failing to provide notice" doesn't mean mailing the notice to the wrong address because the taxpayer failed to notify the taxing district of an address change. Failing to provide notice means that no notice was ever sent anywhere. It is the taxpayer's duty to keep the appraisal district supplied with a current address.

If a property owner disagrees with a notice of appraised value, they are normally entitled to file a protest with the appraisal review board. The protest must be in writing and timely filed. Generally, the protest must be filed not later than the 30th day after the notice of appraised value was delivered to the property owner. For a homestead exempted property, the notice of protest must be filed before May 1 or not later than the 30th day after the notice of appraised value was delivered, whichever is later. Failing to comply with the administrative protest procedures will result in the preclusion of any



# Focus on...

further appeal of the appraisal review board's ruling. Appraisal districts in counties with a population of 500,000 or more must allow a property owner with a homestead exemption to file a notice of protest electronically.

There are two types of protests normally available to a homestead exempted property owner: (1) determination of the appraised value of the property; and (2) unequal appraisal of the owner's property. The first protest type is what it says it is, that the property owner simply disagrees with the value of the property provided in the notice of appraised value. The second type deals with taking a reasonable number of comparable properties within the taxing district, appropriately adjusted based on the factors above, and showing that the appraised value of the subject property in the notice of appraised value is above the median of those property values. Disparities in the timing of the reappraisal of properties within the district may lend certain properties to be at lower values. Due to advancements in technology and the growing need for governmental funding, larger taxing districts have significantly cut down on this time lag.

The property owner will be notified of the hearing time, date, and place at least 15 days prior to the date of the hearing. The chief appraiser is required to provide notice of the rights of the taxpayer, notice of the right to inspect and copy the district's evidence, and a copy of the hearing procedures. The property owner may appear at the hearing in person, through an agent, or by affidavit. If the



property owner fails to appear in some form, they will be precluded from appealing the appraisal review board's decision. The hearing procedures are very informal. All parties are allowed to offer evidence, examine and cross examine witnesses, and present argument to the board. The property owner is permitted to testify to the value of their property, and may offer an opinion of market value or the inequality of the appraisal by the district.

So long as all of the administrative procedures have been followed to completion, a property owner may further appeal the appraisal review board's decision to a district court or may elect to engage in non-binding arbitration. Under either avenue, the property owner is required to pay the taxes determined to be due before their delinquency as a precondition of further review. The taxpayer's petition for review must be filed with the district court within

60 days of the receipt of the appraisal review board's notice of determination of protest. The review by the district court or arbitrator will be *de novo* or new, so neither the taxing authority nor the property owner is bound by the prior rendition of value. Thus, it is possible for the appraisal district to seek a higher value than it sought in the protest hearing or that set by the appraiser.

A taxpayer may pursue non-binding arbitration by moving the district court to refer the case. However, if the taxpayer wants to engage in non-binding arbitration, the appraisal district must give its consent.

A taxpayer who prevails in a judicial review proceeding may be awarded reasonable attorney's fees. Those fees may not exceed the greater of \$15,000.00 or 20 percent of the total amount by which the property owner's tax liability is reduced by the appeal. Further, the fees may not exceed \$100,000.00 or the total amount by which the property owner's tax liability is reduced by the appeal, whichever is less. These fee caps prevent property owners from receiving reimbursement for attorney's fees where the reduction being sought is only a relatively small amount. The award of fees is, however, mandatory when the taxpayer prevails on a judicial review.

*R. Scott Alagood is board certified in residential and commercial real estate law by the Texas Board of Specialization and practices in Denton at Alagood Cartwright Burke PC..*

# Filing/Trying Your First Divorce Case

By JoAl Cannon Sheridan



## I. INTRODUCTION

When preparing to file an original divorce petition, Motion to Modify, or Motion for Enforcement, it is important to understand the basics and what options and relief are available for each. However, as is often the case in family law, one should be careful what you wish for, because just because you can ask for certain relief does not necessarily mean that you should, especially when children are involved. The purpose of this article is to serve primarily as a primer and a check list of what should be considered when pursuing (or responding to) these types of cases.

## II. DIVORCE

In Texas, there are seven grounds for divorce, the most common of which is "insupportability," (Texas' version of "irreconcilable differences.") Thus, Texas remains a "no fault" divorce state (notwithstanding efforts of some Legislators to change that each session—thankfully they have been overwhelmingly unsuccessful). When filing for divorce, the Petitioner must set out the jurisdictional requirements to file the divorce in the county and state, and set forth the grounds upon

which the divorce is sought. The Petitioner should further set forth all relief being sought (division of property, conservatorship and possession of children, confirmation of separate property, and whether an unequal distribution of property is being sought). Parties to a divorce can also seek basic, standard injunctive relief to preserve the community estate and protect the status quo of child-related issues without necessity of a bond. These issues will be addressed more specifically below.

### A. Venue to File Divorce

Texas Family Code 6.301 sets forth the jurisdictional residency requirements to file suit for divorce. TFC 6.301 states that "A suit for divorce may not be maintained in this state unless at the time the suit is filed either the Petitioner or the Respondent has been:

1. A domiciliary of this state for the preceding six-month period; and
2. A resident of the county in which the suit is filed for the preceding 90-day period."

However, if neither party meets the residency requirements, the court can

abate the proceedings until such time as one of the parties does meet the requirements. (See *In re Milton*, 420 S.W.3d 245 (Tex.App.—Houston [1st Dist.] 2013, orig. proceeding). Likewise, if the residency/jurisdictional requirements are not met at the time the petition is filed, but have been met by the time an amended petition is filed, the courts have found that jurisdiction is proper upon the filing of the amended petition.

Although this venue statute is not itself jurisdictional (i.e. provides authority for the court to exercise control of a case), it is akin to a jurisdictional provision in that it controls a party's right to maintain a suit for divorce and is a mandatory requirement that cannot be waived. (See *Reynolds v. Reynolds*, 86 S.W.3d 272, 276 (Tex.App.—Austin 2002, no pet.).

### B. Grounds for Divorce

Texas Family Code Sections 6.001-6.007 set forth the various grounds for divorce. Any given divorce may have one or more grounds plead as a basis for the divorce. Conventional wisdom would suggest that a party ALWAYS plead insupportability in the event a court might find that another ground has not been met.

#### 1. Insupportability

Insupportability is Texas' version of "irreconcilable differences." It is defined as a marriage that has "become insupportable due to discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation." While this allows a court to grant a divorce without finding any fault, it also does not preclude a court from finding fault for purposes of property division if properly plead by a party. This will be discussed in more detail below.

#### 2. Cruelty

Cruelty as a grounds for divorce is defined in TFC 6.002 as "cruel treatment towards the complaining spouse of a nature that renders further living together insupportable.

This definition does not include "mere disagreements or trifling matters" but instead is conduct that renders living together "unendurable, insufferable, or intolerable." However, it does not need to be physical abuse, but must rise to the level wherein the factfinder could reasonably find the situation unbearable. [See *Newberry v. Newberry*, 351 S.W.3d 552, 557 (Tex. App.—El Paso 2011, no pet.)].

3. *Adultery*

Set forth in TFC 6.003. This needs no explanation. (If it does, perhaps a career change is in order.)

4. *Conviction of Felony*

TFC 6.004 provides for a party to obtain a divorce based upon the conviction of a felony of the other spouse, if that spouse has been incarcerated for at least one year in a state or federal penitentiary and has not been pardoned. However, there is an exception that this cannot serve as the grounds for a divorce if the conviction was a result of the testimony of the complaining spouse.

5. *Abandonment*

TFC 6.005 sets forth the grounds of abandonment as a basis for divorce if it is shown the spouse left the complaining spouse with the intention of abandonment and remained away for at least one year.

6. *Living Apart*

TFC 6.006 states that a court may grant a divorce in favor of either spouse if the spouses have lived apart without cohabitation for at least three years.

7. *Confinement in Mental Hospital*

TFC 6.007 provides that a divorce may be granted upon a showing that: 1) the other spouse has been confined in a state mental hospital or private mental hospital as defined in Section 571.003 of the Health and Safety Code for at least three years; and 2) it appears that the hospitalized spouse's mental disorder is of such a degree and nature that adjustment is unlikely or that if adjustment occurs, a relapse is probable.

### C. Division of Property

When filing a divorce where there is community property to be divided, the court is required to divide the property in an "equitable manner that the court deems just and right," having due regard for the rights of each party and any children of the marriage. However, "equitable" does not necessarily mean "equal" (much to the chagrin of many of our clients). There are many factors a court can consider in dividing a community estate unequally, but the party seeking an unequal division must plead those factors. These are most commonly known as the "Murff" factors.

### D. Murff Factors

Even if a divorce is sought on the grounds of insupportability, a party may seek an unequal division of property. The party must plead for the unequal division. There are many factors the court can consider in making an unequal division, so long as they are pled by the party seeking an unequal division. Those factors are:

- a. fault in the breakup of the marriage;
- b. fraud on the community;
- c. benefits the innocent spouse may have derived from the continuation of the marriage;
- d. disparity of earning power of the spouses and their ability to support themselves;
- e. health of the spouses;
- f. the spouse to whom conservatorship of the child[ren] is granted;
- g. needs of the child[ren] of the marriage;
- h. education and future employability of the spouses;
- i. community indebtedness and liabilities;
- j. tax consequences of the division of property;
- k. ages of the spouses;
- l. earning power, business opportunities, capacities, and abilities of the spouses;
- m. need for future support;
- n. nature of the property involved in the division;
- o. wasting of community assets by the spouses;
- p. credit for temporary support paid

by a spouse;

- q. community funds used to purchase out-of-state property;
- r. gifts to or by a spouse during the marriage;
- s. increase in value of separate property through community efforts by time, talent, labor, and effort;
- t. excessive community-property gifts to the parties' child[ren];
- u. reimbursement;
- v. expected inheritance of a spouse;
- w. attorney's fees to be paid;
- x. creation of community property through the use of a spouse's separate estate;
- y. the size and nature of the separate estates of the spouses;
- z. creation of community property by the efforts or lack thereof of the spouses;
- aa. actual fraud committed by a spouse;
- ab. constructive fraud committed by a spouse.

### E. Dilemma—Should you file Fault grounds?

When filing an original petition or counter-petition, careful thought should be given as to whether to include fault grounds, particularly the more "inflammatory" ones. Obviously divorce is an emotionally charged situation, and often clients have difficulty seeing past their emotions to the potential consequences of their actions or including pleadings that are hurtful or angering to the other party. In some situations it may be necessary to file certain grounds for divorce other than insupportability. However, divorce pleadings are public records, and when children are involved it is often prudent to determine whether or not a fault ground really needs to be included or whether it is truly necessary to achieve the legal relief sought. The careful, mindful practitioner will attempt to discern whether the party is requesting to include a fault ground out of spite or whether it serves some greater legal purpose or necessity. Discussing with the client the potential impact upon children of the marriage or other relationships that could be negatively affected by hurtful pleadings is recommended.



## F. Separate vs. Community Property

When filing a divorce petition, if there is a potential for a party to have any separate property, the petition should request the court to confirm that separate property.

## G. Claims for Reimbursement/Wasting

Often times if one party has separate property that forms a separate estate, that situation may give rise to a reimbursement claim between estates. For example, if the community estate contributed to mortgage payments on a spouse's separate property home, there could be a reimbursement claim seeking some repayment of community funds used to benefit a party's separate estate. Likewise, if a spouse's separate estate paid for certain community expenses, there may be a claim for reimbursement. If this potential exists, the petition/counter-petition should set out a claim for reimbursement and specify which estate has the reimbursement claim for benefitting the other estate.

Further, a type of reimbursement claim is a "wasting claim," which means one spouse alleges the other spouse "wasted" community assets by making expenditures that the spouse either did not approve or would not have approved had the spouse known of the expense (e.g. extravagant gifts/expenditures on a paramour). When this potential exists, the complaining spouse should assert a wasting claim and request the court to "reconstitute" the community estate and award the "wasted" value to the offending spouse. This must be included in the petition/counter-petition in order to obtain relief.

## H. Name Change

If a spouse desires to restore his/her maiden name, the petition must specify that the spouse is seeking a change of name back to the maiden name. The decree should so reflect the change as well. If there is any possibility that a client may want a name change, it should be done in the decree, as it is a fairly easy process. If the client waits until after the divorce has been granted, they

have to file an entirely new "change of name" petition and proceeding, submit to a fingerprint and criminal background check, pay new filing fees, etc.

## I. Temporary Injunctive Relief

The Texas Family Code provides that parties to a divorce can obtain temporary restraining orders and temporary injunctive relief without the necessity of verified pleadings or the posting of a bond in limited circumstances. Those circumstances are intended to protect the community estate and property, as well as prevent the hiding and secreting of children or the strategic change of the children's residence. The reason no verified pleading or bond is necessary is because these issues have been determined by the Legislature to be so important and so basic as to be presumed "irreparable injury." The permitted injunctive relief as pertains to property is found in TFC 6.603, and those regarding the parent-child relationship are found in TFC 105.001. This is not to say other injunctive relief is not available, but if it does not fall within the exceptions of TFC 6.503 and 105.001, then verified pleadings or a bond may be required.

Many jurisdictions have Standing Orders that are automatically triggered upon the filing of a divorce. These Standing Orders generally track the language of the Family Code as to those injunctive exceptions that do not require verified pleadings or a bond. Practitioners should research the local rules of the court or jurisdiction in which the divorce is to be filed to determine if Standing Orders have been issued by that court or jurisdiction. If so, they must be attached to the initial family law petition and served upon the other side to effectuate notice.

## J. SAPCR Issues

If at the time the divorce is filed there are any minor children or if any are expected, the divorce MUST include a disposition of conservatorship, possession and access (i.e. visitation), rights and duties of each parent, and whether child support will be ordered, the amount, and some provisions for

health insurance for the child.

The presumption in Texas is that the parties will be named Joint Managing Conservators, and that one of the parents will be awarded the exclusive right to determine the residence of the children (commonly referred to in shorthand as "the primary parent.") In a petition for divorce, the Petitioner should state whether they are asking for the parties to be named Joint Managing Conservators or whether they are seeking Sole Managing Conservatorship with the other parent named Possessory Conservator, and if so, the grounds therefore. The Petitioner should further state whether they are seeking to be named the conservator with the exclusive right to determine the residence, and if so, whether that should or should not be subject to a geographic restriction. If a geographic restriction is sought, the geographic area should be specified in the petition.

Additionally, there are enumerated "rights and duties" of parents that can be shared jointly, independently or exclusively. While there are a number of "rights" a parent could exercise, the ones that are the most fought over are the right to determine the primary residence of the child; the right to make educational decisions; the right to make psychological and psychiatric decisions; and the right to make non-emergency, invasive medical decisions for the child. The presumption is that these rights will be exercised jointly (except for the exclusive right to determine the residence of the child). If a party seeks to have one or more of these rights exercised exclusively, they should set them out in their pleadings.

Likewise, with regards to possession and access to the child, the presumption is that the non-primary parent will receive at least the Standard Possession Order set forth in TFC 153.312-316. If a party seeks to vary from the presumptive SPO, the party should set that out in the pleading and provide a general basis for the variance.

Further, the petition should set out who the party is asking the court to pay child support and who they are seeking to bear the responsibility for providing



health insurance. The presumption is that the court will impose the statutory guidelines set forth in the Family Code. If a party seeks to vary from the presumptive guidelines, the party should set that out in the pleading and provide a general basis for the variance.

For all relief sought that relates to children of the marriage, the party should plead that the relief sought is "in the best interest of the child." All orders regarding children must be found to be in the best interest of the child, as this is the paramount consideration of the court when making orders affecting children. See TFC 153.002.

### III. MOTIONS TO MODIFY

While property division and non-child related issues disposed of in a divorce cannot be modified (only enforced), ALL non-contractual provisions regarding orders relating to children may be modified until the child is emancipated. This includes conservatorship, rights and duties regarding decision-making, possession and access, and terms and conditions of possession and access.

As a general rule, the burden of proof to modify a prior order is to plead and show that, since the prior order(s) sought to be modified, the modification would be in the best interest of the child AND that the circumstances of a party, a child, or a person affected by the order have materially and substantially changed since the earlier of: 1) the date of the rendition of the order; or 2) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based.

Regarding a modification of conservatorship, possession and access, or terms and conditions of possession and access, material and substantial change does not have to be shown if the grounds for the modification are either: 1) a child 12 or older has or will express to the court the name of the person who is the child's preference to have the exclusive right to determine their residence, or 2) the primary conservator has voluntarily relinquished the primary care and possession of the child to another person (not necessarily the other parent/conservator) for at least six months. However, even these excep-

tions require a showing that the requested modification is in the best interest of the child.

If modification of conservatorship, specifically the person with the exclusive right to determine the residence of the child, or the request is to create a party with that exclusive right (if not previously ordered) and that request has been filed WITHIN ONE YEAR of the prior order or mediated/collaborative settlement agreement, in addition to showing best interest and material and substantial change in circumstances, the party seeking the modification within one year *must* show that the requested modification is necessary because the child's present environment would "significantly impair the child's physical health or emotional development." TFC 156.102. Any modification filed within this time frame must also include a supporting affidavit asserting facts that, if true, meet the significant impairment burden, or that the party seeking the modification is the parent who already has the exclusive right to determine the residence, or that parent has voluntarily relinquished the primary care and possession of the child for at least six months. Failure to attach the supporting affidavit, or having an affidavit that does not allege sufficient facts to support the allegations will result in denial of the relief without a hearing. While the specific facts do not necessarily need to be asserted in the body of the pleading, the general basis for the modification within one year (i.e. significant impairment or voluntary relinquishment) must be set forth and the specific facts *MUST* be included in the supporting affidavit of the Petitioner.

With regards to modification of child support, the pleadings must assert that there has been a material and substantial change in circumstances that support the modification.

### IV. MOTIONS FOR ENFORCEMENT CONTEMPT

Once you have obtained the final decree or order, there may arise a need to enforce those orders. This may come in the form of enforcing a property division, a possession order or child support.

It is important to understand whether the relief being sought is an actual

enforcement or if it is a breach of contract of one of the contractual provisions of a decree, which is not discussed in this article. If the action is one for enforcement, the next step is to determine if contempt will be sought.

Very few non-child related provisions of a decree are "contemptable"—meaning the noncompliant party could be incarcerated for their noncompliance. We do not have debtor's prison in Texas, except for failure to pay child support. But if a party refuses to perform an act which they are capable of performing, they can be held in contempt. For example, if a party fails to pay a judgment to equalize division to the other spouse because they no longer have the money, that is not a contemptable offense. However, if they were previously ordered to execute a deed to property awarded to the other party and simply refuse to do so, then they could be held in contempt.

The single most important rule to remember in an enforcement where contempt is sought is that it must be exactly specific as to what the order required and specifically how the noncompliant party violated the order. If seeking contempt against a party, particularly for failure to pay support, the motion must specify the exact wording of the order allegedly violated and then set forth each and every violation by the violating party, including date, what was ordered and when or whether the party complied in any way. The complaining party must also set forth the relief sought for each and every violation.

Likewise, it is important that when filing a motion for contempt that the pleading specify whether the relief sought is for criminal contempt or civil contempt. Criminal contempt means that the violating party will receive a specific sentence of some sort (incarceration or probation) regardless of whether they subsequently comply with the order (e.g., pay the child support). Civil contempt means the party is incarcerated indefinitely until he or she meets a certain condition (e.g., incarcerated until payment of \$5,000.00 in past-due support; or incarcerated until such time as party executes a special warranty deed in favor of Movant). In other words, criminal contempt is purely punitive in

nature, where civil contempt is incentive for compliance. The two cannot be interchanged and will be voided if challenged. So in pleading and in drafting the order, pay close attention to the type of contempt being ordered.

## V. CONCLUSION

Modern drafting in family law has many instances where pleadings need to be fairly specific, at least to the extent that the claims for certain relief must be set forth specifically. Attached as appendices to this paper are forms for each of the types of pleadings discussed herein. Most of the forms include the whole "kitchen sink" so before using them be sure to

determine which pleadings actually apply to the case. Rarely will there be a situation where all of these claims are necessary. But when in doubt, include the claim so as to avoid being precluded from introducing evidence on the issue at trial. The Texas Family Practice Manual is a goldmine of the proper language to use and types of claims for relief that are available. The Checklist manual published by the Family Law Section of the State Bar is also a valuable tool in assisting with making sure your pleadings and your orders include all the necessary claims and language. Both are available for purchase through either the State Bar Publications or the Family Law Section. While an expense, it is com-

pletely worth the investment, and certainly less expensive than a malpractice action or grievance. Both publications are the result of incalculable hours of volunteer work performed by some of the most respected and talented family law specialists in the state. The Family Law Practice Manual is updated yearly and is available on disk for ease of searching and document production. Highly recommended for any lawyer intending to practice some amount of family law.

Happy drafting!

*JoAl Cannon Sheridan is with Ausley, Algert, Robertson and Flores, L.L.P. in Austin.*

## NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

CAUSE NO. D-1-FM-12-003331

IN THE MATTER OF THE  
MARRIAGE OF

§  
§

IN THE DISTRICT COURT

DAISY DUCK  
AND  
DONALD DUCK

§  
§  
§

126th JUDICIAL DISTRICT

AND IN THE INTEREST OF  
HUEY, DEWEY, AND LOUIE,  
CHILDREN

§  
§  
§

TRAVIS COUNTY, TEXAS

## ORIGINAL PETITION FOR DIVORCE

### 1. *Discovery Level*

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

### 2. *Parties*

This suit is brought by Daisy Duck, Petitioner. Donald Duck is Respondent.

### 3. *Domicile*

Daisy Duck has been a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding ninety-day period.

### 4. *Service*

Process may be served on Donald Duck at 123 Sunnydale Road, Austin, Texas or wherever he may be found.

### 5. *Protective Order Statement*

No protective order under title 4 of the Texas Family Code is in effect, and no application for a protective order is pending with regard to the parties to this suit.

### 6. *Dates of Marriage and Separation*

The parties were married on or about June 18, 1998 and ceased to live together as husband and wife on or about June 1, 2015.

### 7. *Grounds for Divorce*

The marriage has become insupportable because of discord or conflict of personalities between Petitioner and Respondent that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

Daisy Duck also seeks a divorce on the grounds that Donald Duck has been guilty of cruel treatment towards her of a nature that renders further living together insupportable.

Daisy Duck further seeks a divorce on the grounds that Donald Duck has committed adultery.

### 8. *Children of the Marriage*

Daisy Duck and Donald Duck are parents of the following children of this marriage who are not under the continuing jurisdiction of any other court:

Name: Huey Duck  
Sex: Male  
Birthdate: October 2, 2005

Name: Dewey Duck  
Sex: Male  
Birthdate: October 2, 2005

Name: Louie Duck  
Sex: Male  
Birthdate: October 2, 2005

There are no court-ordered conservatorships, court-ordered guardianships, or other court-ordered relationships affecting the children the subject of this suit.

No property of consequence is owned or possessed by the children the subject of this suit.

Daisy Duck believes that Daisy Duck and Donald Duck will enter into a written agreement containing provisions for conservatorship of, possession of, access to, and support of the children. If such an agreement is not made, Daisy Duck requests the Court to make orders for conservatorship of, possession of, access to, and support of the children that is in the best interest of the children.

Daisy Duck requests this court to enter an injunction preventing Donald Duck from introducing the children to any person (animal) with whom he has a romantic or dating relationship during the pendency of this proceeding.

Daisy Duck further requests this court to permanently enjoin Donald Duck from allowing a person with whom he has a dating or romantic relationship to stay overnight while he is in possession of the children.

#### 9. Children's Health Insurance

Information required by section 154.181(b) of the Texas Family Code concerning health insurance coverage for the children is as follows:

Person Providing Insurance: Donald Duck. Health Insurance Carrier: Humana Policy/Group No.: 12345/6789. Amount of Monthly Premiums: \$200/month

The children's health insurance coverage is provided through Donald Duck's employment.

#### 10. Division of Community Property

Daisy Duck requests the Court to order a division of the estate of Daisy Duck and Donald Duck in a manner that the Court deems just and right, as provided by law.

Daisy Duck should be awarded a disproportionate share of the parties' estate for the following reasons:

- a. fault in the breakup of the marriage;
- b. fraud on the community;
- c. benefits the innocent spouse may have derived from the continuation of the marriage;
- d. disparity of earning power of the spouses and their ability to support themselves;
- e. health of the spouses;

- f. the spouse to whom conservatorship of the children is granted;
- g. needs of the children of the marriage;
- h. education and future employability of the spouses;
- i. community indebtedness and liabilities;
- j. tax consequences of the division of property;
- k. ages of the spouses;
- l. earning power, business opportunities, capacities, and abilities of the spouses;
- m. need for future support;
- n. nature of the property involved in the division;
- o. wasting of community assets by the spouses;
- p. credit for temporary support paid by spouse;
- q. community funds used to purchase out-of-state property;
- r. gifts to or by a spouse during the marriage;
- s. increase in value of separate property through community efforts by time, talent, labor, and effort;
- t. excessive community-property gifts to the parties' children;
- u. reimbursement;
- v. expected inheritance of a spouse;
- w. attorney's fees to be paid;
- x. creation of community property through the use of a spouse's separate estate;
- y. the size and nature of the separate estates of the spouses;
- z. creation of community property by the efforts or lack thereof of the spouses; and/
- or
- aa. actual fraud committed by a spouse;
- ab. constructive fraud committed by a spouse.

#### 11. Breach of Fiduciary Duty

Donald Duck, as Petitioner's spouse, had a fiduciary relationship with and a fiduciary duty to Daisy Duck. As a result of their fiduciary relationship, Daisy Duck reposed a special confidence in Donald Duck, and Donald Duck had a duty in equity and good conscience to act in good faith and with due regard for Daisy Duck's interests.

Donald Duck, in violation of his duty to Daisy Duck, has breached his duty to her by spending community funds and/or assets for travel, entertainment, food, lodging and gifts for one or more of his paramours and/or other persons. Further, in violation of both his fiduciary duty and in violation of prior orders in this cause he has converted to cash certain individual retirement accounts and/or tax sheltered accounts, thereby depriving the community estate of those assets and increasing the income tax liability of the parties.

#### Constructive Fraud

Donald Duck has defrauded Daisy Duck by breaching a legal and/or equitable duty owed Daisy Duck as a result of their fiduciary relationship. That breach is fraudulent because, irrespective of Donald Duck's moral guilt, the breach had a tendency to deceive Daisy Duck and to violate Daisy Duck's confidence or to injure the public interest.

*Waste of Assets*

Donald Duck has squandered community assets by making grossly excessive gifts of community assets to a person or persons who is not or are not the natural object of Donald Duck's generosity, being Donald Duck's paramour. Donald Duck has spent and wasted community funds on this person at a time when Donald Duck knew or should have known that Daisy Duck would have objected to these expenditures. These expenditures and gifts of property are in direct violation of Donald Duck's duty as co-manager of the community estate.

**12. *Separate Property***

Daisy Duck owns certain separate property that is not part of the community estate of the parties, and Daisy Duck requests the Court to confirm that separate property as Daisy Duck's separate property and estate.

**13. *Reimbursement***

Daisy Duck requests the Court to reimburse the community estate for funds or assets expended by the community estate to enhance Donald Duck's separate estate.

Daisy Duck requests the Court to reimburse the community estate for the value of community time and effort expended to enhance Donald Duck's separate estate.

Daisy Duck requests the Court to reimburse Daisy Duck's separate estate for separate funds or assets that Daisy Duck expended to benefit or enhance Donald Duck's separate estate.

Daisy Duck requests the Court to reimburse Daisy Duck's separate estate for separate funds or assets that Daisy Duck expended to benefit or enhance the community estate.

**14. *Request for Spousal Maintenance***

Daisy Duck requests the Court to order Donald Duck to pay maintenance to Daisy Duck for a reasonable period after the divorce is granted.

Daisy Duck would show the Court that the parties have been married more than ten (10) years, and that Daisy Duck lacks sufficient property, including property to be distributed to Daisy Duck under the Texas Family Code, to provide for Daisy Duck's minimum reasonable needs, and Daisy Duck clearly lacks earning ability in the labor market adequate to provide support for Daisy Duck's minimum reasonable needs.

**13. *Request for Temporary Orders Concerning Use of Property***

Daisy Duck requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders and issue any appropriate temporary injunctions respecting the temporary use of the parties' property as deemed necessary and equitable, including but not limited to the following:

- a. Awarding Daisy Duck exclusive use and control of the marital residence and enjoining Donald Duck from entering, operating, or exercising control over it.
- b. Awarding Daisy Duck exclusive use and control of the

motor vehicle in her possession and enjoining Donald Duck from entering, operating, or exercising control over it.

**14. *Request for Temporary Orders Regarding Children***

Daisy Duck requests the Court, after notice and hearing, to dispense with the necessity of a bond and to make temporary orders and issue any appropriate temporary injunctions for the safety and welfare of the children of the marriage as deemed necessary and equitable, including but not limited to the following:

- a. Appointing Daisy Duck and Donald Duck temporary joint managing conservators, and designating Daisy Duck as the conservator who has the exclusive right to designate the primary residence of the children.
- b. Ordering Donald Duck to pay child support while this case is pending.

**15. *Request for Interim Attorney's Fees and Temporary Support***

Daisy Duck requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders and issue any appropriate temporary injunctions regarding attorney's fees and support as deemed necessary and equitable, including but not limited to the following:

- a. Daisy Duck requests that Donald Duck be ordered to pay reasonable interim attorney's fees and expenses, including but not limited to fees for appraisals, accountants, actuaries, and so forth. Daisy Duck is not in control of sufficient community assets to pay attorney's fees and anticipated expenses.
- b. Daisy Duck has insufficient income for support, and Daisy Duck requests the Court to order Donald Duck to make payments for the support of Daisy Duck until a final decree is signed.

**16. *Request for Temporary Orders for Discovery and Ancillary Relief***

Daisy Duck requests the Court, after notice and hearing, for the preservation of the property and protection of the parties, to make temporary orders for discovery and ancillary relief as deemed necessary and equitable, including but not limited to the following:

- a. Ordering Donald Duck to provide a sworn inventory and appraisal of all the separate and community property owned or claimed by the parties and all debts and liabilities owed by the parties substantially in the form and detail prescribed by the *Texas Family Law Practice Manual* (2d ed.), form 7-1.

**17. *Travis County Standing Order***

A true and correct copy of the "Travis County Standing Order Regarding Children, Property and Conduct of the Parties" is attached to this pleading as Exhibit "A" and made a part of it for



all purposes, as required by the Travis County District Clerk's File No. 121,012 (Local Rules and General Orders). Daisy Duck has not requested specifically that this order be imposed, but attaches it in compliance with the Travis County Local Rules and General Orders.

**18. Attorney's Fees, Expenses, Costs, and Interest**

It was necessary for Daisy Duck to secure the services of JoAl Cannon Sheridan, a licensed attorney, to prepare and prosecute this suit. To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the children, judgment for attorney's fees, expenses, and costs through trial and appeal

should be granted against Donald Duck and in favor of Daisy Duck for the use and benefit of Daisy Duck's attorneys and be ordered paid directly to Daisy Duck's attorneys, who may enforce the judgment in the attorney's own name. Daisy Duck requests post-judgment interest as allowed by law.

**19. Prayer**

Daisy Duck prays that citation and notice issue as required by law and that the Court grant a divorce and all other relief requested in this petition.

Daisy Duck prays for attorney's fees, expenses, and costs as requested above. Daisy Duck prays for general relief.

AUSLEY, ALGERT, ROBERTSON & FLORES, L.L.P.

3307 Northland Drive, Suite 420

Austin, Texas 78731

Tel: (512) 454-8791

Fax: (512) 454-9091

By: JoAl Cannon Sheridan

State Bar No. 00783784

Attorney for Daisy Duck

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

NO. D-1-FM-13-000456

IN THE INTEREST OF

M.M. and M.M.,

MINOR CHILDREN

§  
§  
§  
§  
§

IN THE 53RD JUDICIAL

DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

**PETITION TO MODIFY PARENT-CHILD RELATIONSHIP**

**1. Discovery Level**

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

**2. Objection to Assignment of Case to Associate Judge**

Petitioner objects to the assignment of this matter to an associate judge for a trial on the merits or presiding at a jury trial.

**3. Parties and Order to Be Modified**

This suit to modify a prior order is brought by MINNIE MOUSE, Petitioner. The last three numbers of Petitioner's driver's license number are 789. The last three numbers of Petitioner's Social Security number are 123.

Petitioner is the mother of the children and has standing

to bring this suit. The requested modification will be in the best interest of the children.

Respondent is MICKEY MOUSE.

The order to be modified is entitled *Agreed Final Decree of Divorce* on which judgment was pronounced and rendered on December 16, 2013, and which was signed and ratified by the Court on March 20, 2014.

**4. Jurisdiction**

This Court has continuing, exclusive jurisdiction of this suit.

**5. Children**

The following children are the subject of this suit: Name: M.M. Sex: Male. Birth date: xx/xx/2006

Name: M.M. Sex: Female Birth date: xx/xx/2007

#### 6. *Parties Affected*

The following parties may be affected by this suit: Name: MICKEY MOUSE

Relationship: Father of the children

Process should be served at 2500 Evergreen Drive, Austin, Texas 78703.

#### 7. *Health Insurance Information*

Information required by section 154.181(b) of the Texas Family Code is provided below: MINNIE MOUSE is the parent providing insurance for the children through Medicaid.

#### 8. *Children's Property*

There has been no change of consequence in the status of the child's property since the prior order was rendered.

#### 9. *Modification of Conservatorship and Possession and Access*

The order to be modified is based on a mediated settlement agreement. The circumstances of the children or a person affected by the order have materially and substantially changed since the date of the signing of the mediated settlement agreement on which the order to be modified is based.

Petitioner requests that the terms and conditions for conservatorship be modified to provide as follows:

- a. Petitioner requests that she be appointed as the person who has the right to designate the primary residence of the children within Travis County, Texas, and counties contiguous to Travis County, Texas, and that the requirement that the children attend school at Casis Elementary, O'Henry Middle School, and Austin High, be removed.
- b. Petitioner further requests that the rights and duties of the respective conservators of the children be modified to provide that Petitioner have the following exclusive rights: the exclusive right to make decisions concerning the children's education; the exclusive right to consent to non-emergency, medical, dental, and surgical treatment involving invasive procedures for the children; the exclusive right to consent to psychological and psychiatric treatment for the children; and that she continue to have the exclusive right to receive and give receipt for child support.
- c. Petitioner requests that the Court order that Dr. McMillan continue as the children's therapist, with the frequency of each child's sessions to be as agreed upon by the parties; or, in the absence of agreement, as recommended by the therapist. In the event the therapist recommends joint sessions between the parties and/or joint sessions with a party and a child, the parties shall cooperate with such recommendations. Any uninsured expenses related to a child's individual sessions with his therapist shall be shared equally by the parties; any uninsured

expenses related to joint sessions with a child and a parent (if recommended by

the therapist) shall be the sole responsibility of that parent; and any uninsured expenses related to individual sessions between a parent and the therapist shall be the sole responsibility of that parent.

Petitioner requests that the terms and conditions for access to or possession of the children be modified to provide as follows:

- a. Petitioner requests that Respondent's schedule with the children be modified to the Standard Possession Order without the expanded provisions, so that Respondent's first, third, and fifth weekends begin at 6:00 p.m. on Friday and end at 6:00 p.m. the following Sunday. This Standard Possession Order would also order Respondent's visitation with the children on Thursdays during the school term to occur from 5:00 p.m. on Thursday and ending at 7:00 p.m. that same day. This request is made taking into consideration the children's schoolwork, school attendance, and extra-curricular activities.
- b. Petitioner requests that Respondent's extended summer possession of the children be reduced from thirty days to up to fourteen consecutive days, if written notice is provided by April 1 of a year, beginning no earlier than the day after the child's school is dismissed for the summer vacation and ending no later than seven days before school resumes at the end of the summer vacation in that year, to be exercised in no more than two separate periods of at least seven consecutive days each, as specified in the written notice. In the event that Respondent does not give Petitioner written notice by April 1 of a year specifying an extended period or periods of summer possession that year, Petitioner requests that Respondent have possession of the children with the first seven-day period beginning on June 15 of that year and ending on June 22, and the second seven-day period beginning on July 15, and ending on July 22. Petitioner further requests that these periods of possession shall begin and end at 6:00 p.m. on each applicable day.
- c. Petitioner requests the Court order the parties to discuss and attempt to jointly agree to one extracurricular activity for the children per school semester or season. In the event the parties cannot agree, Petitioner shall select one extracurricular activity per school semester or season. Both Petitioner and Respondent shall support and take the children to the activities during each of their periods of possession respectfully. Each parent may elect two weekends per season whereby the children do not participate due to some other family activity and shall give the other parent notice at least 48 hours prior to the missed event.

- d. Petitioner requests the Court modify the order to include specific language detailing when and where the exchanges of the children shall occur.
- e. Petitioner requests the Court order both parties to support the children in having regular phone conversations when a parent is not in possession of the children for extended periods of time.

The requested modifications are in the best interest of the children.

#### 10. Support

The order to be modified is based on a mediated settlement agreement. The circumstances of the children or a person affected by the order have materially and substantially changed since the date of the rendition of the order to be modified, and the support payments previously ordered should be increased until the children are eighteen years of age and, if the child is enrolled under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma and complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code, or enrolled under section 130.008 of the Education Code in courses for joint high school and junior college credit and complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code, or enrolled on a full-time basis in a private secondary school in a program leading toward a high school diploma and complying with the minimum attendance requirements imposed by that school, until the end of the month in which the child graduates from high school. The support payments previously ordered are not in substantial compliance with the guidelines in chapter 154 of the Texas Family Code, and the requested increase would be in the best interest of the children. Petitioner requests that any increase be made retroactive to the earlier of the time of service of citation on Respondent or the appearance of Respondent in this modification action.

The requested modification is in the best interest of the children.

#### 11. Travis County Standing Order

A true and correct copy of the "Travis County Standing Order Regarding Children, Property and Conduct of the Parties" is attached to this pleading as Exhibit "A" and made a part of it for all purposes, as required by the Travis County District Clerk's File No. 121,012 (Local Rules and General Orders).

#### 12. Request for Attorney's Fees, Expenses, Costs, and Interest

It was necessary for Petitioner to secure the services of JoAl Cannon Sheridan, a licensed attorney, to preserve and protect the child's rights. If the parties are unable to reach an agreement on all issues, Respondent should be ordered to pay reasonable attorney's fees, expenses, and costs through trial and appeal, and a judgment should be rendered in favor of this attorney and against Respondent and be ordered paid directly to Petitioner's attorney, who may enforce the judgment in the attorney's own name. Petitioner requests post-judgment interest as allowed by law.

#### 13. Prayer

Petitioner prays that citation and notice issue as required by law and that the Court enter its orders in accordance with the allegations contained in this petition.

Petitioner prays for attorney's fees, expenses, costs, and interest as requested above. Petitioner prays for general relief.

Respectfully submitted,

AUSLEY, ALGERT, ROBERTSON & FLORES, L.L.P.  
3307 Northland Drive, Suite 420  
Austin, Texas 78731  
Telephone: (512) 454-8791  
Telecopier: (512) 454-9091

By: \_

JoAl Cannon Sheridan  
State Bar No. 00783784

Attorneys for MINNIE MOUSE

NOTICE: THIS DOCUMENT  
CONTAINS SENSITIVE DATA

NO. D-1-FM-11-123456

B.C.

§

261st JUDICIAL DISTRICT

§

A CHILD

§

#### TRAVIS COUNTY, TEXAS MOTION FOR ENFORCEMENT OF CHILD SUPPORT ORDER

This Motion for Enforcement of Child Support Order is brought by JUNE CLEAVER, Movant. The last three numbers of JUNE CLEAVER's driver's license number are 495. The last three numbers of JUNE CLEAVER's Social Security number are 499.

#### Discovery Level

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

#### Objection to Assignment of Case to Associate Judge

Movant objects to the assignment of this matter to an associate judge for a trial on the merits or presiding at a jury trial.

**Child**

The following child is the subject of this suit: Name: BEAVER CLEAVER

Sex: Male  
 Birth date: xx/xx/2011  
 County of residence: Travis

**Jurisdiction**

This Court has continuing, exclusive jurisdiction of this case as a result of prior proceedings.

**Parties and Service**

The following parties may be affected by this suit: Name: **WARD CLEAVER**

Relationship: Father

Process should be served at 123 Happy Lane, Mayberry, Texas 78111, or wherever he may be found.

**Enforcement**

On December 16, 2013 the court heard Petitioner's testimony and on April 21, 2014 in Cause No. D-1-FM-11-002952, styled "*In the Interest of BEAVER CLEAVER, A Child*," in the 261st Judicial District Court of Travis County, the Court signed an order titled "*Order in Suit Affecting the Parent-Child Relationship*", and states in relevant part as follows:

**a. Child Support**

"IT IS ORDERED that WARD CLEAVER is obligated to pay and shall pay to JUNE CLEAVER child support of \$656.00 per month, with the first payment being due and payable on January 1, 2014, and a like payment being due and payable on the first day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

1. the child reaches the age of eighteen years or graduates from high school, whichever occurs later, subject to the provisions for support beyond the age of eighteen years set out below;
2. the child marries;
3. the child dies;
4. the child enlists in the armed forces of the United States and begins active service as defined by section 101 of title 10 of the United States Code; or
5. the child's disabilities are otherwise removed for general purposes.

If the child is eighteen years of age and has not graduated from high school, IT IS ORDERED that WARD CLEAVER's obligation to pay child support to JUNE CLEAVER shall not terminate but shall continue for as long as the child is enrolled-

1. under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma or under section 130.008 of the Education Code in courses for joint high school and junior college credit and is complying with the minimum atten-

dance requirements of subchapter C of chapter 25 of the Education Code, or

2. on a full-time basis in a private secondary school in a program leading toward a high school diploma and is complying with the minimum attendance requirements imposed by that school.

IT IS ORDERED that any employer of WARD CLEAVER shall be ordered to withhold from earnings for child support from the disposable earnings of WARD CLEAVER for the support of BEAVER CLEAVER.

IT IS FURTHER ORDERED that all amounts withheld from the disposable earnings of WARD CLEAVER by the employer and paid in accordance with the order to that employer shall constitute a credit against the child support obligation. Payment of the full amount of child support ordered paid by this order through the means of withholding from earnings shall discharge the child support obligation. If the amount withheld from earnings and credited against the child support obligation is less than 100 percent of the amount ordered to be paid by this order, the balance due remains and obligation of WARD CLEAVER, and it is hereby ORDERED that WARD CLEAVER pay the balance due directly to the state disbursement unit as specified below.

On this date the Court signed an Income Withholding for Support.

IT IS ORDERED that all payments shall be made through the state disbursement unit at Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly remitted to JUNE CLEAVER for the support of the child."

**b. Notification**

"IT IS FURTHER ORDERED that WARD CLEAVER shall notify this Court and JUNE CLEAVER by U.S. certified mail, return receipt requested, of any change of address and of any termination of employment. This notice shall be given no later than seven days after the change of address or the termination of employment. This notice or subsequent notice shall also provide the current address of WARD CLEAVER and the name and address of his current employer, whenever that information becomes available.

IT IS ORDERED that, on the request of a prosecuting attorney, the title IV-D agency, the friend of the Court, a domestic relations office, JUNE CLEAVER, WARD CLEAVER, or an attorney representing JUNE CLEAVER or WARD CLEAVER, the clerk of this Court shall cause a certified copy of the Income Withholding for Support to be delivered to any employer."

**c. Health Care**

"IT IS ORDERED that WARD CLEAVER and JUNE CLEAVER shall each provide medical support of the child as set out in this order as additional child support for as long as the Court may order WARD CLEAVER and JUNE CLEAVER to provide support of the child under sections 154.001 and 154.002 of the Texas



Family Code. Beginning on the day WARD CLEAVER and JUNE CLEAVER's actual potential obligation to support the child under sections 154.001 and 514.002 of the Family Code terminates, IT IS ORDERED that WARD CLEAVER and JUNE CLEAVER are discharged from the obligations set forth in this medical support order with respect to that child, except for any failure by a parent to fully comply with those obligations before that date. IT IS FURTHER ORDERED that the cash medical support payments ordered below are payable through the state disbursement unit and subject to the provisions for withholding from earnings provided above for other child support payments.

1. Definitions—

"Health insurance" means insurance coverage that provides basic health-care services, including usual physician services office visits, hospitalization, and laboratory, X-ray, and emergency services, that may be provided through a health maintenance organization or other private or public organization, other than medical assistance under chapter 32 of the Texas Human Resources Code.

"Reasonable cost" means the cost of health insurance coverage for a child that does not exceed 9 percent of WARD CLEAVER's annual resources, as described by section 154.062(b) of the Texas Family Code.

"Reasonable and necessary health-care expenses not paid by insurance and incurred by or on behalf of a child" include, without limitation, any copayments for office visits or prescription drugs, the yearly deductible, if any, and medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges. These reasonable and necessary health-care expenses do not include expenses for travel to and from the health-care provider or for nonprescription medication.

"Furnish" means:

- a. to hand deliver the document by a person eighteen years of age or older either to the recipient or to a person who is eighteen years of age or older and permanently resides with the recipient;
- b. to deliver the document to the recipient by certified mail, return receipt requested, to the recipient's last known mailing or residence address; or
- c. to deliver the document to the recipient at the recipient's last known mailing or residence address using any person or entity whose principal business is that of a courier or deliverer of papers or documents either within or outside of the United States.

2. Findings on Health Insurance Availability—Having considered the cost, accessibility, and quality of health insurance coverage available to the parties, the Court finds:

Health insurance is available to JUNE CLEAVER at a reasonable cost of \$193.00 from another source, including the program under section 154.1826 of the Texas Family Code to

provide health insurance in title IV-D cases.

IT IS FURTHER FOUND that the following orders regarding health-care coverage are in the best interest of the child.

3. Provision of Health-Care Coverage—

As additional child support, JUNE CLEAVER is ORDERED to continue to maintain health insurance for the child who is the subject of this suit that covers basic health-care services, including usual physician services, office visits, hospitalization, and laboratory, X-ray, and emergency services.

JUNE CLEAVER is ORDERED to maintain such health insurance in full force and effect on the child who is the subject of this suit as long as child support is payable for that child. JUNE CLEAVER is ORDERED to convert any group insurance to individual coverage or obtain other health insurance for the child within fifteen days of termination of her employment or other disqualification from the group insurance. JUNE CLEAVER is ORDERED to exercise any conversion options or acquisition of new health insurance in such a manner that the resulting insurance equals or exceeds that in effect immediately before the change.

JUNE CLEAVER is ORDERED to furnish WARD CLEAVER a true and correct copy of the health insurance policy or certification and a schedule of benefits within thirty days of the signing of this order. JUNE CLEAVER is ORDERED to furnish WARD CLEAVER the insurance cards and any other forms necessary for use of the insurance within thirty days of the signing of this order. JUNE CLEAVER is ORDERED to provide, within three days of receipt by her, to WARD CLEAVER any insurance checks, other payments, or explanations of benefits relating to any medical expense for the child that WARD CLEAVER paid or incurred.

Pursuant to section 1504.051 of the Texas Insurance Code, it is ORDERED that if JUNE CLEAVER is eligible for dependent health coverage but fails to apply to obtain coverage for the child, the insurer shall enroll the child on application of WARD CLEAVER or others as authorized by law.

Reimbursement for Actual Cost of Health Insurance Premiums

Pursuant to section 154.182 of the Texas Family Code, WARD CLEAVER is ORDERED to pay JUNE CLEAVER cash medical support for reimbursement of health insurance premiums, as additional child support, of \$193.00 per month, with the first installment being due and payable on January 1, 2014 and a like installment being due and payable on or before the first day of each month until the termination of current child support of the child under this order.

IT IS ORDERED that the cash medical support provisions of this order shall be an obligation of the estate of WARD CLEAVER and shall not terminate on his death.

Pursuant to section 154.183(c) of the Texas Family Code, the reasonable and necessary health-care expenses of the child

that are not reimbursed by health insurance are allocated as follows: JUNE CLEAVER is ORDERED to pay **fifty percent (50%)** and WARD CLEAVER is ORDERED to pay **fifty percent (50%)** of the unreimbursed health-care expenses if, at the time the expenses are incurred, JUNE CLEAVER is providing health insurance as ordered.

The party who incurs a health-care expense on behalf of the child is ORDERED to submit to the other party all forms, receipts, bills, statements, and explanations of benefits reflecting the uninsured portion of the health-care expenses within thirty days after he or she receives them. The nonincurring party is ORDERED to pay his or her percentage of the uninsured portion of the health-care expense either by paying the health-care provider directly or by reimbursing the incurring party for any advance payment exceeding the incurring party's percentage of the uninsured portion of the health-care expenses within thirty days after the nonincurring party receives the forms, receipts, bills, statements, and explanations of benefits.

These provisions apply to all unreimbursed health-care expenses of the child who is the subject of this suit that are incurred while child support is payable for the child.

4. **Secondary Coverage**—IT IS ORDERED that if a party provides secondary health insurance coverage for the child, both parties shall cooperate fully with regard to the handling and filing of claims with the insurance carrier providing the coverage in order to maximize the benefits available to the child and to ensure that the party who pays for health-care expenses for the child is reimbursed for the payment from both carriers to the fullest extent possible.
5. **Compliance with Insurance Company Requirements**—Each party is ORDERED to conform to all requirements imposed by the terms and conditions of any policy of health insurance covering the child in order to assure the maximum reimbursement or direct payment by any insurance company of the incurred health-care expense, including but not limited to requirements for advance notice to any carrier, second opinions, and the like. Each party is ORDERED to use "preferred providers," or services within the health maintenance organization or preferred provider network, if applicable. Disallowance of the bill by a health insurance company shall not excuse the obligation of either party to make payment. Excepting emergency health-care expenses incurred on behalf of the child, if a party incurs health-care expenses for the child using "out-of-network" health-care providers or services, or fails to follow the health insurance company procedures or requirements, that party shall pay all such health-care expenses incurred absent (1) written agreement of the parties allocating such health-care expenses or (2) further order of the Court.

IT IS FURTHER ORDERED that no surgical procedure, other than in an emergency or one covered by insurance, shall be performed on the child unless the parent consenting to surgery has first consulted with at least two medical doctors,

both of whom state an opinion that the surgery is medically necessary. IT SI FURTHER ORDERED that a parent who fails to obtain the required medical opinions before consent to surgery on the child shall be wholly responsible for all medical and hospital expenses incurred in connection therewith and not covered by insurance.

6. **Claims**—Except as provided in this paragraph, the party who is not carrying the health insurance policy covering the child is ORDERED to furnish to the party carrying the policy, within fifteen days of receiving them, all forms, receipts, bills, and statements reflecting the health-care expenses the party not carrying the policy incurs on behalf of the child. In accordance with sections 1204.251 and 154.055(a) of the Texas Insurance Code, IT IS ORDERED that the party who is not carrying the health insurance policy covering the child, at that party's option, or others as authorized by law, may file any claims for health-care expenses directly with the insurance carrier with and from whom coverage is provided for the benefit of the child and receive payments directly from the insurance company. Further, for the sole purpose of section 1204.251 of the Texas Insurance Code, WARD CLEAVER is designated the possessory conservator of the child.

The party who is carrying the health insurance policy covering the child is ORDERED to submit all forms required by the insurance company for payment or reimbursement of health-care expenses incurred by either party on behalf of the child to the insurance carrier within fifteen days of that party's receiving any form, receipt, bill, or statement reflecting the expenses.

7. **Constructive Trust for Payments Received**—IT IS ORDERED that any insurance payments received by a party from the health insurance carrier as reimbursement for health-care expenses incurred by or on behalf of the child shall belong to the party who paid those expenses. IT IS FURTHER ORDERED that the party receiving the insurance payments is designated a constructive trustee to receive any insurance checks or payments for health-care expenses paid by the other party, and the party carrying the policy shall endorse and forward the checks or payments, along with any explanation of benefits received, to the other party within three days of receiving them.
8. **WARNING**—A PARENT ORDERED TO PROVIDE HEALTH INSURANCE OR TO PAY THE OTHER PARENT ADDITIONAL CHILD SUPPORT FOR THE COST OF HEALTH INSURANCE WHO FAILS TO DO SO IS LIABLE FOR NECESSARY MEDICAL EXPENSES OF THE CHILD, WITHOUT REGARD TO WHETHER THE EXPENSES WOULD HAVE BEEN PAID IF HEALTH INSURANCE HAD BEEN PROVIDED, AND FOR THE COST OF HEALTH INSURANCE PREMIUMS OR CONTRIBUTIONS, IF ANY, PAID ON BEHALF OF THE CHILD."

Movant was the Petitioner and Respondent was the Respondent in the prior proceedings.

On December 16, 2013 the court heard Petitioner's First Amended Motion for Enforcement of Child Support Order, and on April 21, 2014 in Cause No. D-1-FM-11-002952, styled "*In the Interest of BEAVER CLEAVER, A Child*," in the 261st Judicial District Court of Travis County, the Court signed an order titled "*Judgment for Child Support Arrearage*," and states in relevant part as follows:

**"Relief Granted**

*Judgment*

IT IS ORDERED that JUNE CLEAVER is granted a cumulative judgment for child support arrearages and Guardian Ad Litem fees against Respondent of \$21,823.53, such judgment bearing interest at 6 percent simple interest per year from the date this order is signed, for which let execution issue. Further, IT IS ORDERED that WARD CLEAVER shall pay these arrearages at the rate of \$100.00 per month, beginning January 1, 2014, and a like payment being due and payable on the first day of each month thereafter until the arrearage is paid in full. The judgment, for which let execution issue, is awarded against WARD CLEAVER, Respondent, and Respondent is ORDERED to make these payments through the State Disbursement Unit at Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly remitted to JUNE CLEAVER for the support of the child. JUNE CLEAVER may enforce this judgment for fees, expenses, and costs in her own name by any means available for the enforcement of child support, including contempt.

*Attorney's Fees*

IT IS ORDERED that judgment is awarded to JoAl Cannon Sheridan of Ausley, Algert, Robertson & Flores, LLP in the amount of \$2,150.00 for attorney's fees, expenses, and costs, with interest at 6 percent per year compounded annually from the date the judgment is signed until paid.

Further, IT IS ORDERED that WARD CLEAVER shall pay these arrearages at the rate of \$100.00 per month, and are in addition to the arrearage payments for child support and the Guardian Ad Litem fees set forth above, beginning January 1, 2014, and a like payment being due and payable on the first day of each month thereafter until the arrearage is paid in full. The judgment, for which let execution issue, is awarded against WARD CLEAVER, Respondent, and Respondent is ORDERED to pay those fees, expenses, costs, and interest, by cash, cashier's check, or money order, to through the State Disbursement Unit at Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly remitted to JUNE CLEAVER for the support of the child. JUNE CLEAVER may enforce this judgment for fees, expenses, and costs in her own name by any means available for the enforcement of child support, including contempt. The court finds that Movant JUNE CLEAVER has paid those fees to the attorney and thus the fees are owed to Movant."

Movant was the Petitioner and Respondent was the Respondent in the prior proceedings.

**Violations**

- a. *Child Support*. Respondent has violated the "**Order in Suit Affecting the Parent-Child Relationship**" as follows:

WARD CLEAVER, Respondent, is in contempt of court for failing to pay to JUNE CLEAVER, Movant the full amount of child support due on each of the payment dates shown below. **Note:** Arrearage total immediately below does NOT reflect arrears confirmed in the prior order titled "*Judgment for Child Support Arrearage*" in the amount of \$21,823.53, which is shown in the record of child support payments maintained by the title IV-D agency, attached to this Motion as Exhibit "A."

Violation	Due Date	Amount Due	Interest Accrued	Amount Paid
1.	01/01/2014	\$656.00		\$0.00
2.	01/31/2014		\$109.12	\$0.00
3.	02/01/2014	\$656.00		\$0.00
4.	02/28/2014		\$109.12	\$0.00
5.	03/01/2014	\$656.00		\$0.00
6.	03/31/2014		\$112.40	\$0.00
7.	04/01/2014	\$656.00		\$0.00
8.	04/30/2014		\$115.68	\$0.00
9.	05/01/2014	\$656.00		\$0.00
10.	05/31/2014		\$118.96	\$0.00
11.	06/01/2014	\$656.00		\$0.00
12.	06/30/2014		\$122.24	\$0.00
13.	07/01/2014	\$656.00		\$0.00
14.	07/31/2014		\$125.52	\$0.00
15.	08/01/2014	\$656.00		\$0.00
16.	08/31/2014		\$128.80	\$0.00
17.	09/01/2014	\$656.00		\$0.00
18.	09/30/2014		\$132.08	\$0.00
19.	10/01/2014	\$656.00		\$0.00
20.	10/31/2014		\$135.36	\$0.00
21.	11/01/2014	\$656.00		\$0.00
22.	11/30/2014		\$138.64	\$0.00
23.	12/01/2014	\$656.00		\$0.00
24.	12/31/2014		\$141.92	\$0.00
25.	01/01/2015	\$656.00		\$0.00
26.	01/31/2015		\$145.20	\$0.00
27.	02/01/2015	\$656.00		\$0.00
28.	02/28/2015		\$148.48	\$0.00
29.	03/01/2015	\$656.00		\$0.00
30.	03/31/2015		\$151.76	\$0.00

Violation	Due Date	Amount Due	Interest Accrued	Amount Paid
31.	04/01/2015	\$656.00		
32.	04/30/2015		\$155.04	\$0.00
33.	05/01/2015	\$656.00		\$0.00
34.	05/31/2015		\$193.00	\$0.00
35.	06/01/2015	\$656.00		\$0.00
36.	06/30/2015		\$161.6	\$0.00
37.	07/01/2015	\$656.00		\$0.00
38.	07/31/2015		\$164.88	\$0.00
39.	08/01/2015	\$656.00		\$0.00
40.	08/31/2015		\$168.16	\$0.00
41.	09/01/2015	\$656.00		\$0.00
42.	09/30/2015		\$171.44	\$0.00
43.	10/01/2015	\$656.00		\$0.00
44.	10/31/2015		\$174.72	\$0.00
45.	11/01/2015	\$656.00		\$0.00
46.	11/30/2015		\$178.00	\$0.00
47.	12/01/2015	\$656.00		\$0.00
48.	12/31/2015		\$181.28	\$0.00
49.	01/01/2016	\$656.00		\$0.00
50.	01/31/2016		\$184.56	\$0.00
51.	02/01/2016	\$656.00		\$0.00
52.	02/29/2016		\$187.84	\$0.00
53.	03/01/2016	\$656.00		\$0.00
54.	03/31/2016		\$191.12	\$0.00
55.	04/01/2016	\$656.00		\$0.00
56.	04/30/2016		\$194.40	\$0.00
57.	05/01/2016	\$656.00		\$0.00
58.	05/31/2016		\$197.68	\$0.00
59.	06/01/2016	\$656.00		\$0.00
60.	06/30/2016		\$200.96	\$0.00
61.	07/01/2016	\$656.00		\$0.00

TOTAL CHILD SUPPORT DUE	\$20,336.00
TOTAL INTEREST DUE	\$4,605.28
TOTAL PAID	\$0.00
TOTAL ARREARS FOR CURRENT CHILD SUPPORT	\$24,941.28

A copy of the child support payments maintained by the Attorney General of Texas – Child Support Division is attached hereto as Exhibit “A” and incorporated herein by reference.

JUNE CLEAVER requests that Respondent be confined in the county jail until Respondent complies with the order of the Court, and that any unpaid support that accrues after the filing of this action be included in confirmed arrears.

b. *Notification.* Respondent has violated the “*Order in Suit Affecting the Parent- Child Relationship*” as follows:

WARD CLEAVER, Respondent, is in contempt of court for failing to notify the court and JUNE CLEAVER of his change of address, termination of employment, current address and current employer.

JUNE CLEAVER requests that Respondent be confined in the county jail until Respondent complies with the order of the Court.

c. *Health Care.* Respondent has violated the “*Order in Suit Affecting the Parent- Child Relationship*” as follows:

Despite being ordered to reimburse JUNE CLEAVER for the cost of the child’s health insurance premium beginning January 1, 2014, WARD CLEAVER, Respondent, is in contempt of court for failing to pay to JUNE CLEAVER, Movant the full amount of the child’s health insurance premiums due on each of the payment dates shown below.



Violation	Due Date	Amount Due	Interest Accrued	Amount Paid
1.	01/01/2014	\$193.00		\$0.00
2.	02/01/2014	\$193.00		\$0.00
3.	03/01/2014	\$193.00		\$0.00
4.	03/31/2014		\$0.97	\$0.00
5.	04/01/2014	\$193.00		\$0.00
6.	04/30/2014		\$1.93	\$0.00
7.	05/01/2014	\$193.00		\$0.00
8.	05/31/2014		\$2.90	\$0.00
9.	06/01/2014	\$193.00		\$0.00
10.	06/30/2014		\$3.86	\$0.00
11.	07/01/2014	\$193.00		\$0.00
12.	07/31/2014		\$4.83	\$0.00
13.	08/01/2014	\$193.00		\$0.00
14.	08/31/2014		\$5.79	\$0.00
15.	09/01/2014	\$193.00		\$0.00
16.	09/30/2014		\$6.76	\$0.00
17.	10/01/2014	\$193.00		\$0.00
18.	10/31/2014		\$7.72	\$0.00
19.	11/01/2014	\$193.00		\$0.00
20.	11/30/2014		\$8.69	\$0.00
21.	12/01/2014	\$193.00		\$0.00
22.	12/31/2014		\$9.65	\$0.00
23.	01/01/2015	\$193.00		\$0.00
24.	01/31/2015		\$10.62	\$0.00
25.	02/01/2015	\$193.00		\$0.00
26.	02/28/2015		\$11.58	\$0.00
27.	03/01/2015	\$193.00		\$0.00
28.	03/31/2015		\$12.55	\$0.00
29.	04/01/2015	\$193.00		\$0.00
30.	04/30/2015		\$13.51	\$0.00

Violation	Due Date	Amount Due	Interest Accrued	Amount Paid
31.	05/01/2015	\$193.00		\$0.00
32.	05/31/2015		\$14.48	\$0.00
33.	06/01/2015	\$193.00		\$0.00
34.	06/30/2015		\$15.44	\$0.00
35.	07/01/2015	\$193.00		\$0.00
36.	07/31/2015		\$16.41	\$0.00
37.	08/01/2015	\$193.00		\$0.00
38.	08/31/2015		\$17.37	\$0.00
39.	09/01/2015	\$193.00		\$0.00
40.	09/30/2015		\$18.34	\$0.00
41.	10/01/2015	\$193.00		\$0.00
42.	10/31/2015		\$19.30	\$0.00
43.	11/01/2015	\$193.00		\$0.00
44.	11/30/2015		\$20.27	\$0.00
45.	12/01/2015	\$193.00		\$0.00
46.	12/31/2015		\$21.23	\$0.00
47.	01/01/2016	\$193.00		\$0.00
48.	01/31/2016		\$22.20	\$0.00
49.	02/01/2016	\$193.00		\$0.00
50.	02/29/2016		\$23.16	\$0.00
51.	03/01/2016	\$193.00		\$0.00
52.	03/31/2016		\$24.13	\$0.00
53.	04/01/2016	\$193.00		\$0.00
54.	04/30/2016		\$25.09	\$0.00
55.	05/01/2016	\$193.00		\$0.00
56.	05/31/2016		\$26.06	\$0.00
57.	06/01/2016	\$193.00		\$0.00
58.	06/30/2016		\$27.02	\$0.00
59.	07/01/2016	\$193.00		\$0.00

TOTAL MEDICAL SUPPORT DUE	\$5,983.00
TOTAL INTEREST DUE	\$391.86
TOTAL PAID	\$0.00
TOTAL ARREARS FOR MEDICAL SUPPORT	\$6,374.67

A copy of the child support payments maintained by the Attorney General of Texas – Child Support Division is attached hereto as Exhibit “A” and incorporated herein by reference.

JUNE CLEAVER requests that Respondent be confined in the county jail until Respondent complies with the order of the Court, and that any unpaid support that accrues after the filing of this action be included in confirmed arrears.

d. *Medical Expenses Reimbursement.* Respondent has violated the “*Order in Suit Affecting the Parent-Child Relationship*” as follows:

Despite being ordered to pay directly to the health-care provider or reimburse JUNE CLEAVER for 50% of the children’s unreimbursed medical expenses beginning January 1, 2014, WARD CLEAVER, Respondent, is in contempt of court for failing to pay to JUNE CLEAVER, Movant 50% of the following children’s medical expenses incurred on each of the dates shown below.

Violation	Provider	Treatment Date	Total Amount Due	Unreimbursed Amount Due
1.	VIK Medical	02/05/2014	\$55.00	\$27.50
2.	Bee Caves Pediatrics	02/06/2015	\$31.95	\$15.98
3.	Bee Caves Pediatrics	03/30/2015	\$20.00	\$10.00
4.	Bee Caves Pediatrics	06/26/2015	\$40.00	\$20.00
5.	Bee Caves Pediatrics	10/28/2015	\$20.00	\$10.00
6.	HEB Pharmacy	01/30/2014	\$0.00	\$0.00
7.	HEB Pharmacy	02/06/2014	\$15.08	\$7.54
8.	HEB Pharmacy	02/07/2014	\$10.00	\$5.00
9.	HEB Pharmacy	03/17/2014	\$10.00	\$5.00
10.	HEB Pharmacy	03/17/2014	\$35.00	\$17.50
11.	HEB Pharmacy	03/17/2014	\$10.00	\$5.00
12.	HEB Pharmacy	04/17/2014	\$10.00	\$5.00
13.	HEB Pharmacy	04/17/2014	\$35.00	\$17.50
14.	HEB Pharmacy	06/13/2014	\$35.00	\$17.50
15.	HEB Pharmacy	08/22/2014	\$10.00	\$5.00
16.	HEB Pharmacy	08/22/2014	\$35.00	\$17.50
17.	HEB Pharmacy	09/20/2014	\$35.00	\$17.50
18.	HEB Pharmacy	10/31/2014	\$35.00	\$17.50
19.	HEB Pharmacy	11/03/2014	\$35.00	\$17.50
20.	HEB Pharmacy	11/17/2014	\$10.00	\$5.00
21.	HEB Pharmacy	11/17/2014	\$10.00	\$5.00
22.	HEB Pharmacy	11/17/2014	\$35.00	\$17.50
23.	HEB Pharmacy	11/21/2014	\$35.00	\$17.50
24.	HEB Pharmacy	12/15/2014	\$35.00	\$17.50
25.	HEB Pharmacy	12/26/2014	\$35.00	\$17.50
26.	HEB Pharmacy	12/26/2014	\$10.00	\$5.00
27.	HEB Pharmacy	12/26/2014	\$60.00	\$30.00
TOTAL REIMBURSEMENT DUE			\$540.08	\$270.04
TOTAL REIMBURSEMENT PAID				\$0.00

TOTAL ARREARS FOR UNREIMBURSED MEDICAL \$270.04

A copy of the receipts for the above are attached hereto as Exhibit "B" and incorporated herein by reference.

JUNE CLEAVER requests that Respondent be confined in the county jail until

Respondent complies with the order of the Court, and that any unpaid support that accrues after the filing of this action be included in confirmed arrears.

e. *Past-Due Child Support.* Respondent has violated the "*Judgment for Child Support Arrearage*," as follows:

WARD CLEAVER, Respondent, is in contempt of court for failing to pay to JUNE CLEAVER the specified amounts of **past-due child support on the confirmed arrearage** due on each of the payment dates shown below:

Violation	Due Date	Amount Due	Amount Paid
1.	01/01/2014	\$100.00	\$0.00
2.	02/01/2014	\$100.00	\$0.00
3.	03/01/2014	\$100.00	\$0.00
4.	04/01/2014	\$100.00	\$0.00
5.	05/01/2014	\$100.00	\$0.00
6.	06/01/2014	\$100.00	\$0.00
7.	07/01/2014	\$100.00	\$0.00
8.	08/01/2014	\$100.00	\$0.00
9.	09/01/2014	\$100.00	\$0.00
10.	10/01/2014	\$100.00	\$0.00
11.	11/01/2014	\$100.00	\$0.00
12.	12/01/2014	\$100.00	\$0.00
13.	01/01/2015	\$100.00	\$0.00
14.	02/01/2015	\$100.00	\$0.00
15.	03/01/2015	\$100.00	\$0.00
16.	04/01/2015	\$100.00	\$0.00
17.	05/01/2015	\$100.00	\$0.00
18.	06/01/2015	\$100.00	\$0.00
19.	07/01/2015	\$100.00	\$0.00
20.	08/01/2015	\$100.00	\$0.00
21.	09/01/2015	\$100.00	\$0.00
22.	10/01/2015	\$100.00	\$0.00
23.	11/01/2015	\$100.00	\$0.00
24.	12/01/2015	\$100.00	\$0.00
25.	01/01/2016	\$100.00	\$0.00
26.	02/01/2016	\$100.00	\$0.00
27.	03/01/2016	\$100.00	\$0.00
28.	04/01/2016	\$100.00	\$0.00
29.	05/01/2016	\$100.00	\$0.00
30.	06/01/2016	\$100.00	\$0.00

TOTAL PAST-DUE CHILD SUPPORT DUE \$3,100.00

TOTAL PAST-DUE CHILD SUPPORT PAID \$0.00

TOTAL ARREARS FOR PAST-DUE SUPPORT \$3,100.00

A copy of the child support payments maintained by the Attorney General of Texas – Child

Support Division is attached hereto as Exhibit "A" and incorporated herein by reference.

JUNE CLEAVER requests that Respondent be confined in the county jail until Respondent complies with the order of the Court, and that any unpaid support that accrues after the filing of this action be included in confirmed arrears.

f. *Attorney's Fees.* Respondent has violated the "*Judgment for Child Support Arrearage*," as follows:

WARD CLEAVER, Respondent, is in contempt of court for failing to pay to JUNE CLEAVER the specified amounts towards the **judgment on attorney's fees** due on each of the payment dates shown below:

Violation	Due Date	Balance	Amount Due	Interest	Amount Paid
1.	01/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
2.	02/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
3.	03/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
4.	04/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
5.	05/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
6.	06/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
7.	07/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
8.	08/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
9.	09/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
10.	10/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
11.	11/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
12.	12/01/2014	\$2,150.00	\$100.00	\$10.75	\$0.00
13.	01/01/2015	\$2,150.00	\$100.00	\$10.75	\$0.00
14.	02/01/2015	\$2,150.00	\$100.00	\$10.75	\$0.00
15.	03/01/2015	\$2,150.00	\$100.00	\$10.75	\$0.00
16.	04/01/2015	\$2,150.00	\$100.00	\$10.75	\$0.00
17.	05/01/2015	\$2,150.00	\$100.00	\$10.75	\$0.00
18.	06/01/2015	\$2,150.00	\$100.00	\$10.75	\$0.00
19.	07/01/2015	\$2,150.00	\$100.00	\$10.75	\$0.00
20.	08/01/2015	\$2,150.00	\$100.00	\$10.75	\$0.00
21.	09/01/2015	\$2,150.00	\$100.00	\$10.75	\$0.00
22.	10/01/2015	\$2,150.00	\$50.00	\$10.75	\$0.00
23.	11/01/2015			\$10.75	\$0.00
24.	12/01/2015			\$10.75	\$0.00
25.	01/01/2016			\$10.75	\$0.00
26.	02/01/2016			\$10.75	\$0.00
27.	03/01/2016			\$10.75	\$0.00
28.	04/01/2016			\$10.75	\$0.00
29.	05/01/2016			\$10.75	\$0.00
30.	06/01/2016			\$10.75	\$0.00
31.	07/01/2016			\$10.75	\$0.00

TOTAL ATTORNEY'S FEES DUE	\$2,150.00
TOTAL INTEREST DUE	\$419.25
TOTAL PAID	\$0.00
TOTAL ARREARS FOR ATTORNEY'S FEES	\$2,569.25

Movant requests that for each violation alleged above, WARD CLEAVER, be held in contempt, jailed for up to 180 days, and fined up to \$500, and that each period of confinement run and be satisfied consecutively.

#### Future Obligations

JUNE CLEAVER believes, based on the repeated past violations of the Court's order by WARD CLEAVER, that WARD CLEAVER will continue to fail to comply with the order. Movant requests that Respondent be held in contempt, jailed, and fined for each failure to comply with the Court's order from the date of this filing to the date of the hearing on this motion. Specifically, Respondent has been ordered to pay child support under the order sought to be enforced on each of the following future dates and in the following amounts:

Due Date	Child Support Amount Due	Health Care Amount Due	Past-Due Support Due	Attorney's Fees Due	Total Amount Due
08/01/2016	\$656.00	\$193.00	\$100.00	\$100.00	\$1,049.00
09/01/2016	\$656.00	\$193.00	\$100.00	\$100.00	\$1,049.00
10/01/2016	\$656.00	\$193.00	\$100.00	\$100.00	\$1,049.00
11/01/2016	\$656.00	\$193.00	\$100.00	\$100.00	\$1,049.00

JUNE CLEAVER requests that Respondent be confined in the county jail until Respondent complies with the order of the Court, and that any unpaid support that accrues after the filing of this action be included in confirmed arrears.

#### Total Arrearages and Relief Sought

WARD CLEAVER'S total arrearage at the time of filing is \$37,255.43, *not including the anticipated violations specified above or the previously confirmed judgment in the amount of*

\$21,823.53. Thus, the total arrearage at time of filing this Motion is \$59,078.96, which does include the previously confirmed arrearage. JUNE CLEAVER requests confirmation of *all* arrearages set forth herein, and rendition of judgment, plus interest on arrearages, attorney's fees, and costs. JUNE CLEAVER requests the Court to order income withheld for the arrearages, attorney's fees, costs, and interest.

#### Request for Community Supervision

JUNE CLEAVER requests that WARD CLEAVER be placed on community supervision for ten years on release from jail or suspension of commitment.

#### Request for Income Withholding or Bond

WARD CLEAVER has been in arrears for thirty days or more for some portion of the amount due and is in arrears for an amount equal to at least one month's support. JUNE CLEAVER requests the Court to order income withheld for current child support or order a bond or security.

#### Request for Clarification

JUNE CLEAVER requests that, if the Court finds that any part of the order sought to be enforced is not specific enough to be enforced by contempt, the Court enter a clarifying order more clearly specifying the duties imposed on WARD CLEAVER and giving WARD CLEAVER a reasonable time within which to comply.

#### Request for Attorney's Fees, Expenses, Costs, and Interest

It was necessary for JUNE CLEAVER to secure the services of JoAl Cannon Sheridan, of Ausley, Algert, Robertson & Flores, L.L.P., a licensed attorney, to enforce and protect the rights of JUNE CLEAVER and the child the subject of this suit. WARD CLEAVER should be ordered to pay reasonable attorney's fees, expenses, and costs, and a judgment should be rendered in favor of the attorney and against WARD CLEAVER and be ordered paid directly to the undersigned attorney, who may enforce the judgment in the attorney's own name. JUNE CLEAVER requests postjudgment interest as allowed by law.

# Child Support—Special Issues

By William D. Powers

## The Shake Out:

In the midst of divorcing, Larry loses his \$80,000 a year job as a route man for a beer distributor. It is the only job he has had since graduating from high school. His non-compete agreement prevents him from being employed with another distributor. Larry finds a position with a life insurance agency selling life insurance. His compensation will be commission based. He will receive a draw against commissions for the first six months of employment. At the time of the final hearing Larry has sold no policies. The draw is substantially less than Larry's previous income. If Larry does not succeed in his new occupation within the first six months he will need to find another job.

Larry's spouse would hope to be awarded support based on Larry's earning history. Larry would hope to have support based on the guaranteed draw resulting in a much lower support figure than he would be ordered to pay had he not lost the prior employment. However if his new job does not pan out he may not be able to meet his child support obligation even at the lower amount.

Larry's situation poses special problems for Larry, his soon to be former spouse, and the Court. These dilemmas arise when at the time the child support amount is being determined, the paying spouse's immediate and/or future income is in a state of flux. How it will ultimately shake out is yet to be known.

There may be a number of factors to consider in determining both a child support figure and method of payment. Did Larry receive a severance package? What other assets exist which do not produce income that might warrant the court deeming an income and possibly order liquidation of the asset pursuant to 6154.067



of the Texas Family Code. What additional factors set in §154.123 of the Texas Family Code should be taken into account?

Possible resolutions the court might consider could include the following:

1. A lump sum payment;
2. A lump sum together with periodic payments;
3. Setting a temporary support payment with a review date at a point in the future which it is likely that Larry's income will have stabilized; or
4. Ordering a final support amount and leaving it to the parties to modify as circumstances dictate.

## Self-Employed Obligor:

Another source of difficulty in setting an appropriate child support amount can arise when considering the income of a self-employed party.

It is not uncommon to see an earnings history with significant disparity from year to year. There may be the single outstanding year or the single miserable year which skew an otherwise consistent earning pattern. In such instances, it is important to understand the nature of the enterprise and what may be occurring in the mar-

ketplace related to the goods and services provided by the self-employed party.

Frequently, a forensic evaluation of the business will need to be conducted to ascertain the value of a closely held community business. That evaluation can be invaluable in answering the questions which need to be answered for child sup-

port purposes. Such an evaluation should be considered even when the business is separate property rather than community.

Self-employment offers an opportunity for a party to manipulate the record related to income. It is important to explore a number of areas to assure that income has been accurately determined. Has income been under-reported either historically as a tax dodge, or more recently as a strategy by the self-employed party for purposes of the lawsuit? Has the self-employed party deliberately depressed income in an effort to create the appearance of a decline in income? Are there illegitimate debts of the business

which have been fabricated to give a false impression to the Court? Are there paramours or third parties receiving salaries without performing any actual services for the business? When reviewing the party's personal expenses, do they evidence a level of spending or lifestyle which is at odds with the reported income?

Of course, self-employment income can at times be volatile and there may well be legitimate reasons to recognize a downward trend or relatively permanent decrease in income over the party's historically higher income.

The parent receiving support may be well aware of their spouses' management of the business and be able to shed light on the areas to explore. However, it is not unusual to find that they have been kept in the dark. In either event, the challenges presented by the self-employed party will require careful consideration to determine a child support figure which is fair and appropriate for all concerned.

*William D. Powers is Board Certified by the Texas Board of Legal Specialization in Family Law and practices in Austin.*



# Divorce and the Stay-at-Home Parent

By Judith E. Bryant, Partner

When I graduated from the University of Texas School of Law in 1987, my classmates and I, both male and female, were preoccupied with talk of signing bonuses, billable hours, and expectations of making partner at a big firm. At our five year reunion, my female classmates and I were preoccupied with the question of whether formula was cheaper at Target or Wal-Mart. Most of us were new mothers, staying home with babies, and paying little or no attention to the framed law school diplomas and law licenses sitting on the floors of our closets. Our male classmates were still worried about billable hours and hoping to make partner at a big firm in the next few years. While the stay-at-home moms focused on increasing our children's potential, our husbands focused on their earning potential—secure in the knowledge that their children were well cared for at home by a loving mother.

Twenty-nine years after graduation, most of us are still married, and many are still stay-at-home wives and mothers. Others of us got back into the workplace when our children were older or when our kids started going off to college (my case). Do we earn what we would have earned if we had stayed in the workplace without taking time off to stay at home with our children? Probably not, although returning to work as a lawyer is certainly one of the better options out there for people returning to the workplace after many years at home.

I'd like to be politically correct and say that some of my male classmates put off their careers and stayed home with their children, but that is just not the case. That would be a rare thing for my age group in any career. For my generation at least, the impact of stay-at-home parenthood has fallen primarily on women. That is changing rapidly, however, and more



and more families are opting to have mom work full time while dad stays home. This article will, therefore, attempt to be gender neutral, even if that is not my personal experience with this issue.

What is the impact for stay-at-home parents who divorce after years of being out of the workplace? Does Texas law adequately compensate a spouse for a contribution that was no doubt a mutual choice by husband and wife to have one parent at home for the sake of the children? Unfortunately for the stay-at-home parent, the answer is no.

## Community Property—a Limited Solution

Income earned and accumulated during marriage by a married couple in Texas is community property. It does not matter who earned it or whose name is on it—it belongs to them both. The working parent is sometimes baffled by this, but is usually quick to acknowledge that he will, of course, “give her half.” My response to this is usually something like, “you mean you want to give her half of your half? That’s 75%. Don’t you think that’s

a bit much?” That usually gets the message across that the working spouse is not “giving” the other spouse anything—it belongs to her already. For couples who earn a great deal of money and diligently save and invest, getting half (or more) of the community estate might be enough to provide for a spouse who has stepped out of the workforce to work on raising the family.

But what about the vast numbers of people who live paycheck to paycheck and have little to show for their efforts other than some equity in a house they cannot afford after divorce, leased cars and a pile of credit card debt? While the spouse with the good job may quickly recover from the asset split and move on, it is not so simple for the stay-at-home parent who is faced with starting over after being out of the workplace for many years.

In situations like this, where one spouse has a much larger earning capacity than the other, it is not uncommon for courts to divide the community property disproportionately in favor of the stay-at-home parent.

Rarely, however, do courts award more than 60% to one spouse. If the net estate is worth \$500,000, that extra \$50,000 is not going to be enough to make up for the fact that the stay-at-home parent is going back to work as a teacher for \$48,000 per year for the foreseeable future, while the other spouse moves on with his \$300,000 per year salary. So, in most cases, the division of assets alone is unlikely to compensate a non-working spouse for his or her contributions to the family.

## Spousal Maintenance—Too Little Too Late

It is not uncommon for someone to come to my office with the expectation that she can get “alimony” that will be designed to keep her in the “lifestyle to which she has grown accustomed.” While there may be states out there that provide such a remedy upon divorce, Texas is decidedly not one of them. Under Chapter 8 of the Texas Family Code, “spousal maintenance” is limited in amount and duration, and it is used specifically for situations where a spouse will have insufficient property or income to meet his or her “minimum rea-

sonable needs." Meeting one's minimum reasonable needs is a far cry from continuing in the lifestyle to which one has grown accustomed.

While there are exceptions for cases involving spouses or children with disabilities and cases involving family violence, in general, the spouse seeking maintenance has to be married at least ten years to even qualify, and the length of the marriage determines how long the court can order a party to pay—no more than 5 years for parties married more than ten years but less than twenty; no more than seven years for spouses married over twenty years but less than thirty; and no more than ten years for persons married over thirty years. *See Texas Family Code ("TFC") Section 8.054.* The statute specifically adds, however, that the court "*shall limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance to earn sufficient income to provide for the spouse's minimum reasonable needs*" (emphasis added). Clearly, courts are encouraged to order maintenance for the shortest length of time possible.

The amount that a spouse can be ordered to pay is also limited. Pursuant to Texas Family Code section 8.055, that amount is limited to twenty percent of a spouse's gross monthly income, or \$5,000.00, whichever is *less*. A spouse with a million dollar salary – over \$80,000 per month – cannot be ordered to contribute more than \$5,000.00 to his spouse of many years. The spouse with the \$80,000 per month salary will never feel the loss of \$5,000 per month, while the spouse who was used to living on \$80,000 per month will find his or her living situation drastically changed. And, the older she is the harder the impact, as she will have few working years left to build her earning capacity. If the parties have overspent or experienced financial losses over the years, she may have little or nothing to live on at the end of that five to ten year maintenance period – even assuming a judge will order maintenance for the maximum amount allowed. The reality is, judges rarely order the maximum amount or the maximum duration where spousal maintenance is concerned, so it is extremely unlikely that spousal maintenance will put

the non-working spouse back in the position she would have been if she had stayed in the workforce.

#### Child Support—Capped Too Low

Although a former stay-at-home parent is likely to be awarded child support, it also will not be enough to make up for the fact that he or she has been out of the workforce for many years and needs time to build his or her earning potential. Texas has child support guidelines that are routinely applied to determine child support, and they are subject to a "cap." For that reason, even if the paying party has ample resources to keep both households in comparable living situations for the children, it is unlikely to happen from child support alone.

The party paying child support will pay according to his or her "net resources," which is defined as the gross earnings less a set amount of income taxes, social security, medicare, union dues and health insurance premiums for the children. "Net resources" is not determined on a party's actual take-home pay, since a party can take out extra taxes, contribute to a 401k, etc. and thereby reduce the available amount for child support. Once "net resources" is determined, the court applies a percentage for child support based on the number of children to be supported – 20% for one child, 25% for two, 30% for three children, etc. For the average wage earner, this is a fair contribution, and the sacrifice by the obligor for his children's support is a meaningful one. A judge can vary from the guidelines, however, if the court finds that the application of the guidelines would be "unjust or inappropriate under the circumstances." *See TFC 154.123.* Although the court can consider a wide range of circumstances in determining whether to vary from the guidelines, above or below guidelines child support tends to be the exception, not the rule.

The guidelines cap the net resources, however, at \$8550 per month. In other words, even if the paying party makes \$80,000 per month after taxes, he pays child support as if he only makes \$8550 per month. What would be a meaningful sacrifice for a parent who actually has net resources of \$8550 is a paltry amount for someone who makes so much more. *See*

TFC 154.125 (as updated periodically by the AG's office for inflation). While a court might order more than guidelines, it is by no means guaranteed.

Oddly, requesting above-guidelines child support from someone who enjoys net resources higher than the cap is subject to even *tighter* scrutiny than requesting above-guidelines child support from someone whose net resources are *lower* than the "cap." In other words, it is harder to get extra child support from the very rich than from the above-average. Under TFC 154.126, if the obligor's net resources exceed \$8550, additional amounts can only be ordered based on the "proven needs of the child." The court will determine the overall needs of the child, subtract the maximum guidelines child support amount, and then determine how to divide the excess expenses between the parents. In no event, however, "may the obligor be required to pay more child support than the greater of the presumptive amount or the amount equal to 100 percent of the proven needs of the child." *TFC 154.126.* Even if there are "proven needs" to justify an amount over the maximum, it is within the court's discretion not to award additional sums over the maximum. *Nordstrom v. Nordstrom*, 965 S.W.2d 575, 579 (Tex. App. – Houston [1st Dist.] 1997, pet. denied). And, it is clear from the statute that ordering a party to pay a percentage of his real net resources, for the purpose of providing a better standard of living for the child's primary home, is not allowed. Only if there is an actual "proven need" can child support go higher than what would be ordered with net resources of \$8550 per month.

"Proven needs", to be sure, can mean different things to different people. Do children "need" to be able to stay in their current home and continue to attend the same school? Do children "need" to stay in the private school in which they are enrolled at the time of divorce? Similarly, does a child really "need" dance lessons or tackle football, or are "needs" limited to special medical care, educational disabilities and the like? Some courts might consider sports and other extracurricular activities as wants rather than "needs," some courts might order extra child support, others might require the obligor to



pay, in addition to guidelines child support, some percentage of extracurricular activities, and others might order the obligor to pay only for certain extracurricular activities that are expected to be continued—as in the case of a serious gymnast or a high school athlete or musician applying for scholarships. In other words, there is no guarantee that what a parent thinks his child “needs” is something that the court would order the high wage earner to provide.

And what does that do for the other home in which his children spend most of their time? This limited, additional child support will certainly help to some extent, but not nearly to the extent of what the million dollar salary parent could actually provide if the high wage earner was called upon to make a sacrifice comparable to what lesser-earning people make. The result is often two homes with disparate living conditions, especially if the primary parent was out of the workforce for many years to raise children. The parent who has primary custody of the children may not be able to stay in the school district that the parents originally selected for the

children, because he or she can no longer afford to live in the neighborhood. The children will no longer have a stay-at-home dad or mom to be there when they get home from school, and will spend their time in afterschool care instead. Instead of using a parent’s high income to lessen the impact of the divorce on the children, the law carefully protects the high wage earner from being called upon to pay more than what others who earn far less struggle to pay for their children’s benefit.

The impact of the child support system on stay-at-home parents and their children can be significant. Unless it is important to the obligor to make sure his kids get to continue the life they had before divorce, the kids may find their lifestyle drastically changed, since the stay-at-home parent will likely be unable to make up the difference by getting back into the workforce for the first time in many years.

#### Weighing the Pros and Cons

Does this mean that parents should not quit their jobs and stay home with their kids? No, but it does mean that they

should carefully consider the possible long term impact of that decision, and make sure they can afford to take the risk. What may be best for the children when they are young may create hardship for them later if the parents’ marriage ends. No one thinks they are going to get divorced after many years of marriage—especially when they have children together—and yet it happens almost half the time. For the unlucky half, opting out of the workplace for many years to raise a family can have lasting, financial implications for the stay-at-home parent and the children. Be sure you have a plan in place that will allow you to get back on your feet quickly if your marriage ends, because Texas law provides very few protections for stay-at-home parents in the event of divorce.



*Judith E. Bryant is a partner at Noelke Maples St. Leger Bryant LLP.*



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## The Ethics of Paralegals Representing Corporations

Ellen Lockwood, ACP, RP

A few years ago, a PD member contacted me stating that her attorney was representing a client in Justice of the Peace court. They had received a pleading from the opposing party, a corporation, which had been signed by a paralegal who worked in-house for the corporation. The PD member was unsure how she should address the obvious issue of UPL with the paralegal.

Surprisingly, it turned out that the paralegal had not committed an ethics violation by signing the pleading. Pursuant to Texas Government Code 6 27.031(d), a corporation is not required to be represented by an attorney in JP court. Texas Government Code 6 28.003(e), regarding small claims court, includes the same statement.

Although the Texas Rules of Civil Procedure apply to justice courts, they also state that there may be an exception where specifically provided by law or rules. It would appear that the section of the Texas Government Code cited above makes that exception.

Further research did not locate any local rules regarding this situation or any other rule or statute that requires a non-attorney representing a corporation in JP or small claims courts to be an officer of the corporation. Therefore, if a paralegal who signs a pleading on behalf of a corporation appearing in justice court is, in fact, an employee of the corporation, such an action would appear to be within the

scope of the statute.

We may assume the legislators were anticipating an officer of a corporation would be representing a corporation in justice or small claims court, not a staff member, and certainly not a paralegal. While I could not find any rule or statute prohibiting a paralegal employee from representing her employer in justice and small claims court, it is not advisable.

While a paralegal may represent a corporation in justice and small claims court, the other restrictions for paralegals in Texas still apply. There are serious issues regarding the ethics of a paralegal representing a corporation in small claims or justice court. The primary issue is that a corporation may rely too much on the paralegal's legal training and experience which could cause the paralegal to commit UPL by giving legal advice to the corporation. If there is a paralegal employed by the corporation, then there is either in-house counsel or outside counsel who could represent the corporation, or an officer or director could handle that duty, seeking guidance from counsel.

Although it appears the paralegal who signed the pleading for the corporation appearing in JP court did not commit UPL by doing so, and despite the statutes permitting such representation in justice and small claims court, it is not advisable for paralegals to take on representation of corporations. Paralegals asked to do so should decline and suggest an officer of the corporation handle the matter.



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

president of the Division. She is a frequent speaker on paralegal ethics and intellectual property and the lead author of the Division's Paralegal Ethics Handbook published by Thomson Reuters. You may follow her at [www.twitter.com/paralegaletics](https://www.twitter.com/paralegaletics) and she may be contacted at [ethics@txpd.org](mailto:ethics@txpd.org).



## EXCEPTIONAL PRO BONO SERVICE AWARD

The Paralegal Division (PD) of the State Bar of Texas is proud to sponsor an Exceptional Pro Bono Service Award. Its purpose is to promote the awareness of pro bono activities such as those defined by the State Bar of Texas, and to encourage PD members to volunteer their time and specialty skills to pro bono projects within their community by recognizing a PD member who demonstrates exceptional dedication to pro bono service. Paralegals are invited to foster the development of pro bono projects, to provide assistance to established pro bono programs, and work closely with attorneys to provide unmet legal services to people with low incomes. This annual award will go to an individual PD member, who performed the pro bono service(s) in the State of Texas, and has volunteered his or her time and special skills in providing uncompensated services in pro bono assistance to their community. The recipient of the award will be announced at the Paralegal Division Annual Meeting Luncheon, his/her expenses to attend the Annual Meeting Luncheon will be incurred by the Division, and a profile of the individual will be published in the Fall issue of the *Texas Paralegal Journal*.



### Definition of Paralegal Pro Bono Service (Adopted June 2013)

Providing legal assistance, without remuneration or compensation to the paralegal, that requires specific legal skills, knowledge or training, under the supervision of a licensed attorney or qualified organizations, whether individually, or through non-profit charitable, religious, civic, community, or governmental organizations, and serving as an advocate for those with limited means or that are unable to speak for themselves.

- Providing legal support services for persons of limited means, either through qualified legal services/legal aid programs.
- Providing legal support services at community legal clinics; and
- Providing assistance for, working directly with attorneys on cases, or providing direct client advocacy, under legal services/advocacy programs that are sponsored by a bar association, court, governmental agency or non-profit agency.

Please complete the attached nomination form, and return it **NO LATER THAN MARCH 31, 2017** to the following:

Shanna Mello, Pro Bono Chair  
Eggleston King, llp  
Fort Worth/Weatherford  
201 Fort Worth Highway  
Weatherford, Texas 76086  
**ProBonoAward@txpd.org**

**EXCEPTIONAL PRO BONO SERVICE AWARD  
NOMINATION FORM**

Individual's Name: \_\_\_\_\_

PD Member Number: \_\_\_\_\_

Firm: \_\_\_\_\_ Job Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Yrs. in Practice: \_\_\_\_\_

Work Experience: \_\_\_\_\_

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

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

Return (**no later than March 31, 2017**) to:

**Shanna Mello, Pro Bono Chair**  
**Eggleston King, llp**  
Fort Worth/Weatherford  
201 Fort Worth Highway  
Weatherford, Texas 76086  
ProBonoAward@txpd.org

# TEXAS PARALEGAL DAY CELEBRATIONS



**District 1 Celebrates Texas Paralegal Day**  
District 1 of the Paralegal Division, State Bar of Texas, celebrated Texas Paralegal Day in style with a CLE and Luncheon held on October 19, 2016 at the Winstead PC law firm. The luncheon was sponsored by four fantastic companies, Hanna & Hanna, Kim Tindall & Associates, OmniVere and Easy Serve. Our CLE, “Ethics In The Movies,” was presented by Teresa Schneider, Shareholder at Winstead PC. The presentation was absolutely engaging and informative. Each of the members in attendance, were presented with goodie bags from each of the sponsors along with door prizes.

Kim Goldberg, TBLS-BCP  
Director, District 1



**District 2 Celebrates Texas Paralegal Day**  
District 2 of the Paralegal Division joined their colleagues from Dallas Area Paralegal Association, North Texas Paralegal Association, and JL Turner Legal Association—Legal Section, to celebrate Texas Paralegal Day on October 28, 2016 at the Belo Mansion. Under the leadership of Past PD President and PD Charter Member Michele Boerder, the planning committee assembled a program that included an inspiring speech from State Bar President Frank Stevenson. The proclamation issued by the Texas Legislature in 1981 was on prominent display during the program. Credentialed paralegals in attendance received recognition for attaining their CP, ACP, RP, CRP, and/or TBLS credentials. Along with Past PD Presidents Ms. Boerder, Wendi Rogers, CP, and Joncilee Davis, ACP, current PD President Megan Goor, TBLS-BCP and current PD President-Elect Mona Hart Tucker, ACP, were among the 116 in attendance

Jay M. Williams, TBLS-BCP  
Director, District 1/Treasurer





### District 3 Paralegal Day Celebration

Division 3 celebrated the 35th anniversary of the Paralegal Division during its Paralegal Day Luncheon on October 12, 2016! With the help of generous sponsors, the District hosted 74 members, friends and guests for lunch on the rooftop at the Reata Restaurant in Fort Worth. Representative Phil King served as our moderator and raffle name puller, Mr. Nick Bettinger, Tarrant County Bar Association President-Elect and Dr. Barbara Kirby presented a 1 hour CLE on ethics. We were fortunate to also have Tom Vick, President-Elect for the State Bar of Texas, and his staff attend. In addition to the many door prizes, each attendee received a goodie bag full of items donated by sponsors. Thank you to the District 3 Paralegal Day Planning Committee for all of their hard work in making the luncheon truly a special event.

Mary Wintermote  
Director, District 3/Secretary



### District 4 Paralegal Day Celebration

District 4 celebrated Texas Paralegal Day on Thursday, October 20, 2016 from 6-8 pm at Parkside on 6th Street. It was a joint event with the local association, Capital Area Paralegal Association (CAPA) We had approximately 75 attendees for the cocktail reception with keynote speaker, Ace Pickens. Mr. Pickens is a local Austin attorney who spoke on the value of paralegals and importance of paralegal membership in professional associations at both the local and state levels. Each member who attended received a special gift compliment of the Paralegal Division in honor of the Paralegal Division's 35th Anniversary! It was a great time for all who attended and a hugely successful event. The cost was free for members to attend because of the tremendous support of our sponsoring vendors.

Stephanie Sterling, TBLS-BCP  
Director, District 4/Parliamentarian





### District 5 Paralegal Day Celebration

District 5 held its San Antonio Paralegal Day celebration luncheon in conjunction with the local San Antonio Paralegal Association on October 19, 2016 at the Norris Conference Center. This was the 13th annual Paralegal Day celebration for the San Antonio paralegal community. There were over 200 attendees and 14 vendors who gathered to celebrate Texas Paralegal Day. The theme of the event was "Making Texas A Safer Place" and Judge John Specia (Ret) was the keynote speaker, addressing the issue of "What Can We Do to Promote Child Safety". Heidi Helstrom was awarded Paralegal of the Year and volunteers were recognized by the Community Justice Program, a pro bono program sponsored by the San Antonio Bar Association. Participation in a vendor parade gave attendees the opportunity to win door prizes and two very lucky persons to win a \$500.00 Grand Prize. This event continues to be a highlight for the legal community, with many attorneys, judges, and other legal professionals coming together to recognize the many hard working paralegals in this community.

Susan M. Wilen, Nurse Paralegal  
Director, District 5



### District 6 Paralegal Day Celebration

District 6 and our two area legal professionals associations co-hosted a Texas Paralegal Day Celebration on Monday, October 24, 2016 at the MCM Elegante Hotel in Lubbock, Texas.

Kim Fox  
Director, District 6

### D7 Paralegal Day Dessert Event!

District 7 came together to celebrate Paralegal Day at Taste Dessert Bar in Amarillo. We ate delicious appetizers and shared made from scratch desserts. What a great way to spend time together and to get to know each other a little better! As we passed around our dessert platters we discussed the paralegal profession and what it means to us. I am so pleased we were able to acknowledge this day and each other. Thanks to all of you who joined us!

Shandi Howard, CP  
Director, District 7



### District 11 Paralegal Day Celebration

District 11, Paralegal Division, State Bar of Texas; The Paralegal Association/Permian Basin; and The Midland County Bar Association joined together again and sponsored the annual Court Observance Day Luncheon on October 20 at the Midland Country Club. This year we combined Court Observance Day with Texas Paralegal Day and the 35th Anniversary of the Paralegal Division, State Bar of Texas into a wonderful celebration. The Honorable Royal Furgeson, U.S. District Judge (retired) and Founding Dean of the University of North Texas-Dallas School of Law, was our keynote speaker, his topic being “The United States and the Rule of Law—Joined at the Hip from the Beginning.” He also incorporated the PD 35th Anniversary and Texas Paralegal Day into his speech. A highlight of the luncheon was the presentation and retiring of the Colors by the Midland County Sheriff’s Office Honor Guard. Over 150 people from the legal community attended.

Janet L. McDaniel, CP  
Director, District 11



### District 12 Paralegal Day Celebration

On October 20, 2016, District 12 celebrated Paralegal Day by having a joint social with the Denton County Paralegal Association at Eastside Denton. The sponsors were Alagood Cartwright Burke PC, Laughlin Law & Title, Coffey & Peace, LLP and Springer & Lyle, LLP. Paralegals and attorneys attended and we had a cake to celebrate our special day which Michelle Beecher, District 12 Director dropped.

Michelle Beecher  
Director, District 12





### District 14 Paralegal Day Celebration

Paralegal Day was celebrated in Northeast Texas on two occasions. The Tyler Area Association of Legal Professionals had a luncheon at the Tyler Chamber of Commerce on October 13, 2016, with a presentation by Honorable Nichole Mitchell, Magistrate Judge for the Eastern District of Texas, Tyler Division. Numerous door prizes were awarded and a cake honoring Paralegal Day was provided for dessert.

Paralegal Day was also celebrated by the Northeast Texas Association of Paralegals in Longview at a luncheon on October 19, 2016, at The Roc in Longview, Texas. A presentation was made by Compex, and lunch was provided at no charge by Newk's.

Javan Johnson, ACP, TBLS-BCP  
Director, District 14



### District 15 Paralegal Day

On October 14, 2016, District 15 had a very intimate crowd at Russo's New York Pizzeria as we celebrated our "2nd Annual Paralegal Day Celebration/Membership Social Event." Despite the fact that the crowd was small and our guest speaker got the dates mixed up, it made for a very fun evening! The members/guests shared stories and offered encouraging words to each other. The ambience paired with really good food made for a delightful/fun evening!

Edna Garza, TBLS-BCP  
Director, District 15

### District 16 Luncheon—Texas Paralegal Day

Our luncheon was held on October 19, 2016 to celebrate Texas Paralegal Day. We had a great turnout with about 40 paralegals, students and even attorneys showed up to support the day. Our guest speaker was Daniel Ortiz, Assistant General Counsel with El Paso Water Utilities and his topic was on Governmental Immunity. We received positive feedback from attendees on a great and informative presentation. We were able to get several vendors to donate gift certificates, baskets, drinks & dessert, candy bags and tumblers to give away to all our hard working paralegals on their special day.

Becky Lopez  
Director, District 16



## TEXAS ADVANCED PARALEGAL SEMINAR

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# TAPS on Track—Journey to Excellence

Erica Anderson, ACP, 2016 TAPS Chair

As a bit of background, the Texas Advanced Paralegal Seminar, dubbed “TAPS,” Planning Committee meets in January (a full 9–10 months) before hosting the conference to begin work on themes, coordinating speakers, contacting exhibitors, and the best practices to put the very best conference on for paralegals *hosted by paralegals*. This year’s convention took place in historic San Antonio at the Wyndham Riverwalk from September 28 through September 30, 2016, and your Planning Committee had no shortage of ideas. With the typical schedule involving two full days of CLE, a half day of classes, and socials on two evenings, with the convention closing with a keynote luncheon, there are many details and behind-the-scene specifics to sort out before the conference’s first class session.

Classes were held all day on Wednesday and Thursday, while the evenings offered a chance for paralegals to let loose and mingle. The speaker line-up featured several judges and magistrates and section leaders from the State Bar. As I try to pinpoint stand out speakers, I have trouble selecting just one or two or even a handful. With 64 speakers to choose from, the variety of topics is great. Guiding the speakers is that their audience is typically a seasoned paralegal or a newer one trying to learn the advanced topic. Many delivered outstanding presentations and supplied the attendee with mementos in the form of a whitepaper. Without speakers, there is no educational element, so my appreciation is unmeasurable for those who donated their time and knowledge to us.

Wednesday’s mixer was just that—a mix of friends, colleagues, vendors, classmates, students, and teachers. Staying on the hotel grounds to meet and greet everyone, a relaxed



atmosphere took over as everyone was able to push out all of the obligations from external sources. Thursday morning would bring early morning classes, so many wandered down the Riverwalk in good company for a peaceful meal on Wednesday evening. Thursday’s social was held off site and a costume contest set the mood before loading buses! Taken to the historical Sunset Station, the party-goers were welcomed with a vintage train station, adorned with rose windows filled with stained glass. The beautiful building lent itself to a different era and treated the group to a sensational evening filled with easy smiles and homage to the Roaring 20s. A costume photo booth, marvelous 35th Anniversary ice sculpture, and good eats topped off the event for everyone to prepare for a few classes on Friday and the farewell luncheon.

As has become custom, the Friday morning session has catered towards the betterment of the paralegal profession. This year focused on community service projects and how to immerse yourself into your community. Summarizing past events and discussing options often provides a new idea that benefits the group and the community, and this year was no exception. From suggestions of book drives

for family courts to veteran estate planning services, we have an astounding wealth of knowledge among us, and accessing it is a challenge. Putting it all together in one room proved to be very beneficial as there have been several new chapters written by our colleagues in their communities.

Paired with the Paralegal Division’s 35th Anniversary, TAPS drew everyone in to experience the success of *growth*. There was much to celebrate this year. Themed to match the Thursday social venue, TAPS on Track—Journey to Excellence, allowed all in atten-





dance to appreciate the evolving nature of life, professionally and personally. This year, the conference involved a local charity, the San Antonio Food Bank. In the early planning stages, the Committee, and particularly Javan Johnson, worked side by side to integrate a sense of community and a message to “pay it forward.” As a way to involve everyone, donations were taken up with a chance to win an additional grand prize of \$500 and instead of gifts to presenters and volunteers, a donation was made to the Food Bank in their names. Guests at Sunset Station heard a powerful and personal story by San Antonio Food Bank’s Louie Guzman. Continuing the message to give back to the community, Michael Guerra, CDO of the San Antonio Food Bank, was Friday’s keynote speaker. By the time it was all said and done, over \$2,400 was raised, which translates to over 17,264 meals the Food Bank can provide. As the emcee during Friday’s keynote luncheon, it was a humbling moment to announce the generosity of my colleagues and see the surprise and appreciation on the face of Mr. Guerra. Indeed, the event was a celebration to memorialize how far we have come.

A first-time TAPS attendee, Andrew Liesman (Atlas, Hall & Rodriguez, LLP) had this to say, “I want to thank the TAPS volunteers, they did a great job! There were great programs that covered a wide-

range of subjects. Everyone was very friendly and made a warm welcome, which made the experience better. The event was well-organized and the TAPS app was very functional and easy to use. I appreciate how TAPS opened my eyes on how valuable paralegals really are and appreciate the fact that this event is for making paralegals better and a grade above—to strive for excellence.”

Due to the generosity of our Grand-Prize Sponsors (see below) we were able to give away four grand-prizes this year. The lucky winners were Molly Bullis (San Antonio), Susy Johnson (Fort Worth), Lisa West (Winters), Jay Williams (Dallas).

As in the past several of the attendees provided comments on the wonderful TAPS speakers.

Julie Sherman (Fort Worth) attended *HIPAA Compliance Training for Lawyers and Paralegals* by Charles Hardy and Ann Jamieson. Julie indicated that, “The presentation was inclusive of The Health Insurance

Portability and Accountability Act of 1996 (HIPAA), Texas House Bill 300 (a/k/a Texas Health and Safety Code Chapter 181) and HITECH. The presentation discussed the history of HIPAA, how HB 300 expanded the application to Lawyers and paralegals who handle medical records, and what training is now required and the potential fines. The presentation also discussed the importance of knowledge regarding fake Wi-Fi hotspots, Wi-Fi Pineapple Nanos, Unsecure Wi-Fi and outdated encryption methods. Mr. Hardy and Ms. Jamieson’s presentation was extremely well presented and very informative. They also provided copies of HIPAA compliant authorizations as well as the necessary forms and information for a training program for attendees to take back to their office to make their offices HIPAA & HB 300 compliant. “

Julie also attended *Do We Really Need Lawyers? Trends in Limited Licensing and The Question of Access to Civil Legal Assistance* by Dr. Barbara Kirby. Julie indicated that, “Dr. Kirby’s presented on the future of the Paralegal Profession, the potential for limited licensed legal professions in Texas and the need for Access to Justice. Washington is the first state to







create a program for limited license legal technicians (LLLT's), and the first seven people learned they passed the test in June, 2015. The licensing program is regulated by the State Supreme Court and administered by the Limited License Legal Technician Board appointed by the Court. The LLLT's have strict education requirements, must pass the qualifying examination, are subject to ethical rules and disciplinary procedures and must be covered by malpractice insurance. While Washington is currently the only state to formally license non-lawyers to provide legal services, several other states, including California, are actively exploring the concept. Dr. Kirby discussed the recent Community Needs and Services Study which provided interesting insights into how people decide whether to seek the aid of a lawyer. Dr. Kirby's presentation also discussed how a very significant part of the funding for legal aid in Texas came from IOLTA (Interest on Lawyer's Trust Account). Since interest rates have plummeted and remained at record lows, legal aid funding has been dramatically reduced. Dr. Kirby recommended everyone get involved in Pro Bono work. Dr. Kirby's paper contained references and links to the many different studies and articles discussed during her presentation. She challenged everyone to stay current on the very slow but potential changes in the paralegal profession."

Mona Hart-Tucker, Paralegal Division President-Elect, (Daingerfield) attended *Best Practices for Drafting Documents*, by Jennifer White, and said "the presentation included some great tips on putting together documents that are both technically correct and easily readable. Ms. White reminded attendees to always start with the basics—double-checking the case style, parties' names, and signature blocks. She recommends drafting a document based on case-specific facts, and not a boiler-plate format. The examples she

provided were very helpful!"

Mona also reported on Laura Mason's presentation, *Succession Planning: Use of Partnerships and Limited Liability Companies for Preserving Family Businesses*, saying, "it was very informative for those of us who deal with both entity formation and estate planning. She stressed that estate-planning documents and business documents need to be consistent in order to really accomplish what the client wants. When they conflict, litigation (and resulting depletion of the estate!) could be the result. Very helpful tips."

Jay Williams, Paralegal Division District 2 Director and Treasurer, (Dallas) said, "Among the interesting topics presented at TAPS 2016, I attended *Adjuster and Attorney Interactions: What You Need to Know*. What made this topic so interesting is the speaker used to be an adjuster and is now an attorney. Alex Merced presented a fascinating talk on the role an adjuster (or adjusters) take in evaluating an injury claim. Mr. Merced explained the hierarchy within an insurance office and how it relates to a law firm. He also provided great explanations why we paralegals (and our attorneys) often are frustrated with insurance adjusters. The presentation could have easily gone two hours. This was easily among the top 3 of the sessions I attended."

Jay also said, "I have not attended a writing seminar in quite some time so







seeing this topic on the schedule caught my eye and I was not disappointed. Alex Miller gave a great presentation on how to write strong and convincing in briefs, motions, even simple correspondence.

While I still hold on to some of the older style of writing, I was heartened to learn a lot of those practices are still relevant today. We even learned to get a better handle on dealing with those pesky commas,

or lack thereof, in our writings!”

Susan Davis (Fort Worth) said, “*Cloud Computing and The Virtual Law Practice* presented by Mark Unger and Chris McKinney was a very informative topic. The presenters were well versed and understood their topic. They presented the information well. I was able to learn several things about the cloud that I was not aware of. This is a topic that I hope will be addressed further at the next TAPS in Addison. This information is changing so quickly and I am sure there will be new applications available. The CRM – Customer Relations Management information and Project Management Systems were very interesting to learn about. I will admit a longer session would have been appropriate to soak up all of this valuable information. Overall, a great presentation.”

Susan also has this to say, about *Ten Things Your Judge Wants You to Know* presented by Hon. Antonia Arteaga. “Judge Arteaga made it very clear of the importance of Paralegals in her Court. Judge Arteaga illustrated this by saying that when





attorneys who come to her court with their paralegals are more organized and prepared to be in her court as opposed to the attorneys who do not bring their paralegals to court. Judge Arteaga was very complimentary of the paralegal profession and stressed the value that we are to the legal profession as a whole. One of her tips that she wanted everyone to take away from her presentation is when we are in court to introduce ourselves to the bailiff, court reporter and the judge and if you have not been in that particular court to go down early to learn about what equipment is available in the courtroom and how to use it. The presentation was very informative to see how a judge views paralegals. Great presentation.”

Special thanks goes out to the planning committee, volunteers, hotel staff, supporting vendors and exhibitors, contributors, door prize sponsors, and of course, the impressive speakers.

We want thank all our wonderful sponsors, we could not do this event without them:

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Jim Hollerbach of Hollerbach & Associates, Inc. said “We are very pleased to have been a part of TAPS again this year. Always a fun and educational event as well as a great opportunity to network with some wonderful people from all over Texas!”

I look forward to what Megan Goor, President and Chair TAPS 2017 Planning Committee, has planned. Go ahead and mark your calendars for October 4–6, 2017, to attend TAPS in Addison.



# Congratulations, You Are Being Audited!

*By Mary Wintermote, District 3 Director/Secretary*

**E**ach fall, ten percent of the Active and Associate members of the Paralegal Division receive a notice advising that they are being audited. The word “audit” can bring about a lot of feelings; most of them negative. You ask yourself, “Why was I chosen?” or in a few cases “Why am I getting audited again? I was selected last year.” In fact, when I was audited after my first year as a member, I wondered if I had done something to raise a flag on my renewal application.

The Paralegal Division Board of Directors passed a motion in December 2002, which became effective in May 2004, requiring 6 hours of continuing legal education per year for Active and Associate members of the Division. Since that time, Active and Associate members have been required to report CLE earned between June 1 and May 31 for each succeeding year at the time of membership renewal. In order to show compliance, became necessary for the Division to perform a random audit.

The CLE requirement is based on the belief that professional development strengthens the profession and improves a member’s competencies, knowledge and skill set. The audit concept was created to establish a system of confirming the validity of the submitted CLE information. Additionally,

Comment 8 to Texas Disciplinary Rule of Professional Conduct 1.01 (Competent and Diligent Representation) on “maintaining competence” also applies to paralegals in that paralegals should also “engage in continuing study and education.” As a result, the Membership Renewal/ Spot Audit Ad Hoc Committee began during the 2007–2008 membership year. In order to renew as an Active or Associate member of the Paralegal Division, the renewing member must submit information on 6 hours of CLE credit taken during the preceding membership year.

This year, the random sample was selected through Microsoft Excel’s random number assignment function. Three individual sorts were made using the Excel function and, following the final search, the first 10% of members listed received the audit notice letter. This year, 119 members’ names were chosen. By using the random sample function, the Committee has no control over or outside input into determining beforehand those members to be audited.

The Active or Associate member whose name is selected for audit, is required to send the CLE Proof of Attendance Certificates as verification of CLE attendance listed on the membership renewal form. The responsive information is then sent to the Committee Chair via mail or e-mail. Once

the Committee receives the certificates, they confirm the CLEs listed on the member’s renewal application against a master CLE list from the previous year. Members are provided an ample amount of time to respond to the request; however, those who fail to respond to the audit letter, are reported to the Board of Directors for further action, which may result in revocation of Membership.

If you receive an audit letter, don’t ignore it. If you are unsure what you need to do, follow the information on the audit notice letter and contact the Committee Chair for additional information or clarification. You can make responding to any future audit easier by keeping track of your CLE attendance certificates and updating CLE information under tracking. (For more information, go to <https://txpd.org/faqs.asp?p=CLE%20-%20Mandatory#FAQ2>).

*Mary R. Wintermote is District 3 Director and Secretary of Paralegal Division. Mary is a senior litigation paralegal in the Fort Worth office of Cotten Schmidt & Abbott, LLP. She also works collaboratively on complex litigation matters with the firm’s New Orleans, Houston and Corpus Christi offices, assists with technology training and serves as liaison to several of the firm’s major clients.*

# PARALEGALS

## Texas Bar College

### Associate Membership

# PRIDE & PROFESSIONALISM

## REQUIREMENTS

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.

## PURPOSE

In delivering the highest quality legal services to clients, the lawyer-paralegal team is an essential element. As the law develops, continuing legal education for paralegals is as important as it is for lawyers. Through associate member status, the College honors paralegals that make a commitment to maintain and enhance their professional skills through attending an extraordinary amount of continuing legal education hours.

## BENEFITS

- A certificate of membership and a leather portfolio with the Texas Bar College logo
- Newsletter sent three times a year
- Distinction of attaining a higher level of professional membership
- Unlimited free access to the Online Library of TexasBarCLE.com that includes thousands of CLE articles from TexasBarCLE courses
- A twenty-five dollar discount to all TexasBarCLE.com live or video replay seminars

## JOIN TODAY!

Please visit the Texas Bar College website for more information on becoming a Paralegal Associate Member:

<https://texasbarcollege.com/merchandise/membership>



# TEXAS

Professionalism Through Education.





## President's Membership Drive Challenge begins December 1, 2016 - Meet the challenge and be entered to win \$500 cash prize!

PARALEGAL DIVISION  
PRESIDENT'S MEMBERSHIP DRIVE CHALLENGE  
DECEMBER 1, 2016 - FEBRUARY 25, 2017

**PRESIDENT MEMBERSHIP DRIVE CHALLENGE:** Be entered to win \$500! The Paralegal Division will hold a membership drive challenge for **Active** and **Associate** members between December 1, 2016 and February 25, 2017 during our pro-rated (1/2 price) period for the remaining 2016-2017 membership year. For every five new members (Active, Associate, Subscribing, Sustaining, and/or Student) whom you refer from anywhere in the state (not just your district) and who join the Paralegal Division, your name will be entered into a drawing for a \$500 cash prize! Be sure to give your PD member referral code to the individuals who are joining as new members during the challenge period.<sup>1</sup> **To receive credit, the NEW member must enter the PD member's referral code.** See the instructions below for your referral code.

**Here's how to determine your referral code that you'll provide prospective members:**  
Your 9 digit referral code is made up of the **first 5 letters of your last name** in lower case, plus the **last 4 digits of your membership number** from your Bar card. (If your last name has less than 5 letters, please add "0" to fill the remaining 5 characters.) Omit any spaces or special characters.

Here are some examples for a referral code, using Bar card number XXXX2222:  
(Need last name up to 5 letters, plus last 4 of Bar card, for 9 total)

Lee - input **lee002222**

La Costa - input **lacos2222**

O'Kelly - input **okell2222**

Hart-Tucker - input **hartt2222**

Smith - input **smith2222**

The winner of the President's Membership Drive Challenge will be announced on **March 13, 2017** (10 business days following the deadline of February 25).



Thank you!

Megan Goor, TBLS-BCP, President

Contact [president@txpd.org](mailto:president@txpd.org) with any questions.

For more information - [www.txpd.org](http://www.txpd.org)

<sup>1</sup> This challenge is for current Paralegal Division Active and Associate members and excludes current Directors. The District Director of the winner will receive a \$50 gift card.

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# PARALEGAL DIVISION ONLINE STORE

*A Division With Vision . . . Empowering Paralegals!*

## About us . . .

The State Bar of Texas was the first bar association in the United States to create a separate division for paralegals. The Division was created on October 23, 1981, and charged with “enhancing legal assistants’ participation in the administration of justice, professional responsibility, and public service in cooperation with the State Bar.” The term legal assistants later was changed to “paralegals.” The Division looks forward to fulfilling its mandate enthusiastically, energetically and professionally.

The Paralegal Division of the State Bar of Texas offers members merchandise to promote the paralegal profession and their membership of the Paralegal Division.

1981 [www.txpd.org](http://www.txpd.org) 2016

## PD and 35th Anniversary Products

The Paralegal Division was created in 1981. This year, we are celebrating our 35th Anniversary and offering the all products with our 35th Anniversary seal! These products will be available for a limited time.

The PD is offering PD products with its traditional logo, as well as 35th Anniversary logo products (in Black and White or Bronze).

Go to the PD online store today!

<http://www.cafepress.com/paralegaldivision>

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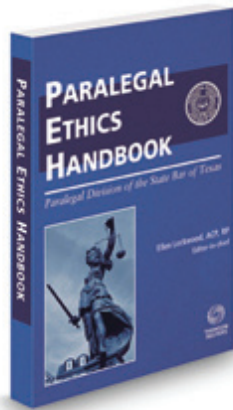
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## The Paralegal Ethics Handbook, 2016 ed.

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

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

*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 topics such 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 canons, plus 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

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