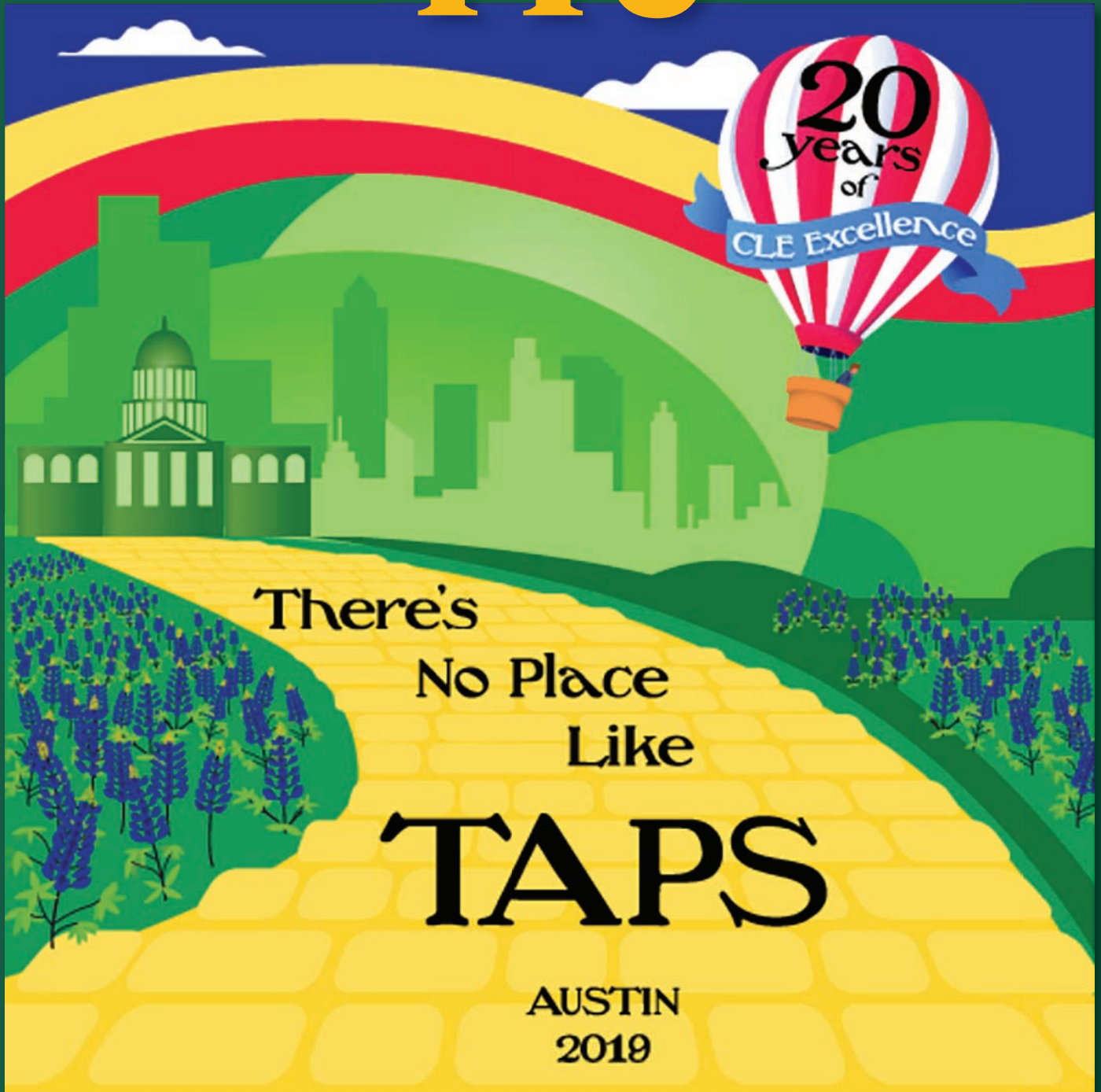


SUMMER 2019 VOL. 25 NO.1

TPIJ

Texas Paralegal Journal





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PRESIDENT'S *Message*

Division with a Vision...Empowering Paralegals

Stephanie R. Sterling, TBLS-BCP

As the summer nears, it marks the end of my term as your President. June 7th is my last Board of Directors meeting and when I will hand the gavel off to the next incoming President.

It has truly been a pleasure to serve as your President! Thank you for giving me the opportunity to serve!

I went into this position wanting to accomplish specific goals for the membership, effect some change for the good, while helping all members voice their opinions and speak up as well as encourage you to step out of your comfort zone.

"If you do what you've always done, you'll get what you've always gotten."—Tony Robbins

Although this year is not the year I originally planned for, I believe it has still been a successful one nonetheless! The items focused on and accomplished were as follows:

1. Value our members by spotlighting various members, volunteers, directors, and vendors from around the state each month in the *Paralegal Pulse* e-newsletter. My purpose was to recognize them as their membership and service support the Paralegal Division and contribute to the growth of our profession.
2. Connect with members and volunteers at various events across the state as well as extend members invitations to attend board meetings.
3. To further increase our social media presence and now each of our 12 districts has their own Facebook page. Like your district's page for news on local and state events.
4. Increase our CLE webinar offerings. Thanks to our Online CLE Chair and the various district sub-chairs, we have

been able to offer at least 2 webinars a month!

5. Promote membership and how membership in the Division helps continue to move paralegals forward in Texas and beyond.
6. Empower and educate our members with the necessary tools and information needed to assist you in advancing your career and promoting the paralegal profession. *"Division with a Vision...Empowering Paralegals."*

A few of my goals are currently on going or still in progress as follows:

1. To have a membership drive to promote membership among paralegals and to encourage attorneys to inspire their paralegals to join the Division. The membership drive is currently running from May 1 to June 30. Thanks to 2 generous vendors, Courtroom Sidekicks and Avansic, we are able to offer 3 grand prizes to new members! See our Membership Drive flyer for more details and information.
2. To offer a free CLE webinar to be vendor sponsored.
3. To establish district pages on the Paralegal Division website.
4. To establish a Long-term Strategic Planning Committee to brainstorm for the future to benefit our members and simplify our committee/director procedures.

While not all my original plans were accomplished, the others are in the works and I truly hope that you have been encouraged, felt valued, and have been inspired to speak out and step out of your



comfort zone. As that was my intention for serving as your President. Serving is truly not for your own agenda and it's not about you. Serving in a position like this is a selfless act as you serve for the members and for your profession. I reflect on a 1999 speech by Former Justice Sandra Day

O'Connor in which she noted the following: *"Public service marks the difference between a business and a profession. While a business can afford to focus solely on profits, a profession cannot. It must devote itself first to the community it is responsible to serve. I cannot imagine no great duty than fulfilling this obligation. And I can imagine no greater pleasure."*

I know that service is sometimes the hardest element to fit into our already hectic lives. However, we must recognize that service is a necessary element to success in a legal career. I know that I am a better paralegal for my service to my professional associations (locally - Capital Area Paralegal Association and state - Paralegal Division). While serving is not for your own agenda, it does afford you the opportunity to change your life by forming great friendships and making professional contacts. I hope you will consider serving your association in some way.

Thank you for giving me the opportunity to serve as your Paralegal Division President during the 2018-2019 year. It has been my greatest pleasure to fulfill my duty to service!!

—Stephanie

Stephanie R. Sterling, TBLS-BCP
President 2018–2019

TPIJ

Texas Paralegal Journal

Focus on...

Minimizing Medical Record Costs to Maximize Client Recovery

4

TAPS 2019 Brochure

9

TAPS 2019 Scholarship Announcement

14



Columns

Hot Cites

529 Savings Plans

17

Problems Your Clients or You May Not Anticipate When Using Texas Power of Attorney Forms Covering Digital Assets

19

President's Message

1

Editor's Note

3

Sustaining Members 2018–2019

3

Scruples—The Ethics of Recovering Paralegal Fees

24

Et Al.

The PD Travels to London, England

27

Welcome to the Paralegal Division FAQs!

35

Paralegal Division Standing Committees

36

100 PD Club

41

In Memoriam

41

EDITOR'S *Note*

By Megan Goor, TBLS-BCP, Editor, tpj@txpd.org

This is my farewell Editor's Note. I have thoroughly enjoyed being the Publications Chair and *TPJ* Editor for the last few years and being a part of its transition and growth from print to digital. Shanna Ellis, with the Dauphinot Law Firm, in Arlington, has been assisting me this past year and will be your 2019–2020 Editor and Publications Chair. Please be sure to welcome her! Her e-mail is tpj@txpd.org. Shanna is also the author of our featured article in this edition, "Minimizing Medical Record Costs to Maximize Client Recovery." As you can see, she is a very talented and insightful writer and has some great ideas and goals for the *TPJ*.

Also, in this edition, we have the much sought-after 2019 TAPS brochure! This year is the 20th Anniversary of TAPS (the "Emerald" year) and the "Oz-some" theme is "There's No Place Like TAPS—20 Years of CLE Excellence!" I hope you can join us in Austin! TAPS will be at the Double Tree, Austin, September 18–20, 2019. For more information or to register: <https://txpd.org/TAPS/register.asp> Don't forget the PD offers a TAPS Scholarship! See the enclosed flyer. Entries are due by July 15th.

Thank you to our graphics artist, David Timmons, for his tireless efforts; to PD Coordinator, Rhonda Brashears, and Digimag, for their coordination and steadfast work; to our featured columnists—Ellen Lockwood, Craig Hackler, and Joseph Jacobson; to the social media team for promoting the *TPJ*—Erica Anderson, Public Relations Chair, Melanie Langford, PD Blogger, and Gabby Warner and Brenda Colvin, E-Newsletters Co-Chairs; to the Publications sub-chairs - Deborah Andreacchi (District 2), Shanna Ellis (District 3), Brenda Colvin, TBLS-BCP (District 4), Carmen Antol (District 15), and Student Liaison, Haley Bullard (District 2) for their assistance on different projects and service on this committee; to our faithful advertisers and sustaining members that have supported this project; to Edna Garza, TBLS-BCP, Publications Board Advisor, the Board of Directors, members, and others who have taken the time to author or submit contributions this year.

Sincerely, Megan Goor, TBLS-BCP, 2018–2019 *TPJ* Editor/Publications Chair



Sustaining Members!

The Paralegal Division would like to thank the vendors and/or sustaining members who advertised with us during the 2018–2019 term:

Capitol Services	Courtroom Sidekicks
Hollerbach & Associates	National Federation of Paralegal
The National Academy of	Associations
Distinguished Neutrals	

The Paralegal Division would also like to thank all of our sustaining members for their membership and support during the 2018–2019 term. Please see the full list [here](#).



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DEADLINE FOR FALL ISSUE IS AUGUST 5, 2019. E-mail tpj@txpd.org.

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The Personal Injury Series

Minimizing Medical Record Costs to Maximize Client Recovery

By Shanna Ellis



Expenses are a necessary component of nearly every legal case, whether it's depositions, medical records, or expert witnesses. Texas law allows attorneys to recoup these costs out of their client's recovery, but at the end of it all, that is money the client will not receive. Truly advocating for your client should include trying to put that money back where it belongs- in the client's hands. While it isn't possible to eliminate expenses, it is possible to minimize some of them, which means fewer outgoing expenses for the firm and a higher overall recovery for the client. Higher recoveries mean happier clients, a good reputation for the firm, and potential future referrals. There are a few rules available to assist in minimizing at least a few of the expenses you may encounter. It may take a little extra effort to achieve the desired result, however, that extra effort will yield a grateful attorney who now doesn't have the extra expenditure and a satisfied client that receives a larger check.

Medical Records

If you're a paralegal in any field that involves acquiring medical records, then you already know what a money pit that can be for your firm and client. Many providers outsource their records management to a third-party records retrieval company, and each one's cost analysis varies. Paper copies of records, especially for voluminous records involving extensive treatment, can cost hundreds, even thousands, of dollars. Unfortunately, records are necessary for many areas of litigation or claims and there is no way to circumvent the system. So how do you navigate the waters between the Scylla of needing the records and the Charybdis of the expense? Enter 45 C.F.R. 164.524, the Texas Administrative Code Section 165.2, and, more recently, the HITECH Act.

45 C.F.R. 164.524

This federal statute provides guidelines for individual access to protected health information (PHI), personal representatives, third party directives, and applicable fees for record requests. Remember that federal laws supersede state laws and will override the state's fees, however, if the state fees are more favorable to the requestor consider making the request in compliance with the applicable state laws. The law allows the requestor to obtain a copy of their designated record set (as long as the information is maintained in the designated records set) from the facility or a business associate on behalf of the facility. A designated record set does not include psychotherapy notes or information compiled in anticipation of or for use in a civil, criminal or an administrative action or proceeding.¹ There are certain circumstances where the facility may deny the individual



rights to their PHI- see 164.524(2) for a list of these scenarios.

To clarify, an “individual” is the subject of the requested PHI. A “personal representative” is a person with authority under State law to make health care decisions for the individual, usually the individual’s legal guardian or medical power of attorney designee.² A “covered entity” or “provider” means the medical facility or medical provider the individual received medical care from to which the PHI request is directed. A “designated record set” comprises of the following: a) medical records and billing records from the facility concerning the individual, b) enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, c) other records that are used, in whole or part, by or for the covered entity to make decisions about individuals.³

Section 3(ii) gives the individual the right to direct their PHI to a third party. It does not matter who the third party is; if the individual directs the information to the third party and the request contains all of the critical components required by this section, the covered entity must send the PHI to the designated third party. The required components of the request are: the request must be in writing, must be signed by the individual, and clearly identify the designated person that the information should go to and where to send it.⁴ There are no other requirements for the request. HHS.gov recently issued a clarification under their FAQs that includes the following language:

“Written access requests by individuals to have their PHI sent directly to a third party that include these minimal elements are subject to the same fee limitations in the Privacy Rule that apply to requests by individuals to have a copy of their PHI sent to themselves. This is true regardless of whether the access request was submitted to the cov-

ered entity by the individual directly or forwarded to the covered entity by a third party on behalf and at the direction of the individual. Further, these same limitations apply when the individual’s personal representative, rather than the individual herself, has made the request to send the copy of the individual’s PHI to a third party.”⁵

Translation: when the client writes a request for their records and it includes all of the basic requirements, it doesn’t matter who sends this request to the medical provider. Medical facilities will often attempt to characterize requests for PHI from your client as an attorney request because the attorney’s office is who submitted the request; that is not the case- it is still a patient request. The guidelines are very clear that the sender of the information is not necessarily the requester.

An easy way to ensure that an individual’s PHI request complies with this statute is to have your client complete and sign a letter to the provider (draft this letter on a blank page and do not address it to a specific provider so that you can reuse it) requesting their PHI in electronic format (preferably on CD or DVD) and include your firm’s address and contact person. Fill in the appropriate provider’s information and make certain that if you need medical and billing records that you include a request for both because the facility will only provide what the letter asks for. Don’t use a cover letter, cite a bunch of laws, or refer to the client in the third person- this will smell too much like an attorney request. The facility may try to charge a per page copy rate, an outrageous shipping charge, a basic fee or retrieval/search fee, or a flat custodian fee. Under 45 C.F.R. 164.524(4) and HITECH, a facility may charge a reasonable, cost-based fee that includes only the cost of the following for requests that comply with the provisions of 164.524(3):

1. Labor for copying the PHI whether in paper or electronic format;
2. Supplies for creating the paper or electronic copy;
3. Postage, when the individual requests the PHI be mailed; and
4. Preparing an explanation or summary of the PHI, if agreed to by the individual as required by paragraph (c)(2)(iii) of this section

HHS.gov explicitly states that fees may not include costs for verification, documentation, searching for the records (search/retrieval fee), maintaining systems, recouping for storage, access or infrastructure for data, or any other costs even if the costs are authorized by State law (insert footnote to website access). In other words, the “custodian fee” or “search fee” you see on an invoice is not allowed to be there (even though Texas law states a facility can charge it) as long as the request meets the 3(ii) requirements.⁶

A facility must provide the records no later than 30 calendar days of receiving the request.⁷ This provision specifies “from the date of the request” and not “from the date of the receipt of payment of fees.” Some facilities may try to delay sending the records until they receive payment, but the rule is 30 days from the request.

HITECH, 45 C.F.R., and the \$6.50 Rate

It is important to point out that HITECH applies to electronic copies of records. Since the passing of the Affordable Care Act, many facilities have switched over to electronic records, but there is always a possibility a small office will still keep paper records. An individual is allowed to request that a paper file be converted into an electronic file if possible. HITECH states that the fees for the records should not exceed the cost of the labor used to produce the records.⁸ There are three ways to calculate reasonable costs of medical record fees: a) the actual cost of labor, b) the average cost of labor, and c) a flat rate of \$6.50. There’s been some



confusion about the \$6.50 flat rate so let's be clear- this is NOT a maximum fee, it is merely an option for facilities to use instead of taking the time and effort to calculate their actual or average cost. You are allowed to ask the facility to provide a breakdown of their calculations for actual or average costs; I usually remind them of the \$6.50 rate as an alternative to doing extra work and most of the time, they will charge it. In lieu of exercising this option, the average cost of providing medical records on CD should be no more than \$25.00 (based on 1 hour of labor plus media cost.). Be sure to check postage costs for shipment of CD's. A good practice tip is to include language where client instructs the facility that their attorney will pre-approve any invoices up to a certain amount (I would suggest \$20-\$25) in the request letter.

Per page copy costs do not apply to records provided in electronic format. Most electronic rates include up to 500 pages with an additional charge for records that exceed this amount. If the medical facility or provider uses a system that is certified as being capable of providing the records through the facility's electronic health record technology (CEHRT), such as an internet based patient portal, and the records are available for viewing, downloading, or transmitting then the medical provider cannot charge a fee for the individual's access. Fees are only applicable for the costs of *copying* the records; if no copies are made, then there are no costs.⁹ Additionally, a medical facility or provider must inform the individual in advance of the approximate fees for the requested records, otherwise the failure to provide advance notice may act as a barrier to right of access.¹⁰

HITECH and 45 CFR Is Not for Everyone

These two federal laws only apply when an individual, or the individual's personal representative, requests their own PHI. It does not apply to anyone else who requests the PHI. Example: Your office

represents Sally Sue Johnson in an auto accident claim. Sally Sue needs her medical and billing records to pursue a claim against the person who hit her and expects you to obtain them on her behalf. Sally Sue completes a letter requesting her PHI that you send to the medical providers. This letter is signed and dated by Sally Sue and directs the medical provider to send the PHI to her attorney at your office. The medical provider should respond with an invoice reflecting HITECH or 45 CFR costs which you then pay.

Example 2: Your office represents the person who hit Sally Sue Johnson. You need copies of her records to ensure they are complete files. You send a request for discovery to Sally Sue's attorney and ask for a HIPAA authorization to get her medical records. You send a written records request and the HIPAA form to the medical provider. The medical provider then sends you an invoice reflecting fees allowable by state law, which you pay. You do not get the benefit of 45 CFR or HITECH copy charges because Sally Sue is not the requestor- you are a third party requesting the records on your client's behalf.

165.2 Texas Administrative Code

This is a state statute that provides guidelines for requesting medical records from physicians' offices. This statute is in addition to, and not in lieu of, the Health Insurance Portability and Accountability Act (HIPAA), so based on the nature of their practice doctors can still be subject to HIPAA laws. 165.2 states that fees should still be reasonable and cost based, with paper copies at \$25 for the first 20 pages and \$.50 per page after and electronic records at \$25 for up to 500 pages and \$50 for more than 500. The physician may charge separate fees for billing records and medical records. Additionally, 165.2 imposes a 15-day deadline from the date of the receipt of the request and fees to provide the requested records. The request must specifically call for medical and billing records if both are needed. A physician's

office may not withhold a records request because the patient has an outstanding balance. This is only applicable to physicians in Texas; be sure to check other states' laws for guidance on medical records requests for physicians.

Affidavits

Affidavits are often required for litigation purposes to verify the authenticity of the medical or billing records. Each state's requirements for affidavits varies. 45 CFR and HITECH do not address costs for providing affidavits. 165.2(e)(4)(A) titled "Other Charges" states that "If an affidavit is requested, certifying that the information is a true and correct copy of the records, whether in paper, electronic or hybrid format, a reasonable fee of up to \$15 may be charged for executing the affidavit." This provision leaves a little ambiguity regarding the definition of "executing" but there is room to argue that "executing" includes the notary charge, as the records are not truly certified without the notary's signature. Keep in mind that other states have specific formats for their affidavits, but Texas courts prefer affidavits in compliance with Rule 902(10)(c).¹¹ You may have to push for the \$15 charge with some providers, but most charge an appropriate fee for the affidavits.

Remember that medical records and billing records are formatted according to two different rules; don't be afraid to call a medical provider and insist they correct a flawed affidavit- trust me, the court wants them to be right and doesn't want to hear any excuses about why they are not.

In closing, it will take some time to establish a routine of simplifying your record requests. It will take time to make phone calls and correct providers that are attempting to charge exorbitant amounts for medical records, and it will take time to perfect your firm's approach on how to handle stubborn providers who do not produce the records within the expected time limit. It will be frustrating, and often you will feel like it's just easier to pay the



invoice rather than keep arguing with the provider about it but, in the end, all the extra work and frustration will pay off and you will feel proud knowing how hard you worked to fight for every dime your client receives. Your attorney will feel good about putting more money in their client's pocket, and the client will feel great knowing they hired someone who went to the mattresses for them in every way possible.

Stay tuned for the next segment of The Personal Injury Series- "The Layman's Guide to Medical Terminology"

1. 45 C.F.R. 164.524(a)(1)(i-ii)
2. See 45 CFR 164.502(g) and <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/personalreprs.html> for more information regarding the rights a personal representative can exercise.

3. 45 C.F.R. 164.501
4. 45 C.F.R. 164.524(3)(ii)
5. <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>
6. <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>
7. 45 C.F.R. 164.524(b)(2)
8. 42 U.S.C. 617935(e)
9. <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>
10. <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html>
11. Texas Rules of Evidence 902(10)(c)

Shanna Ellis is the paralegal & office manager at The Dauphinot Law Firm, in Arlington, specializing in Personal Injury, Civil Rights, and Employment Law.



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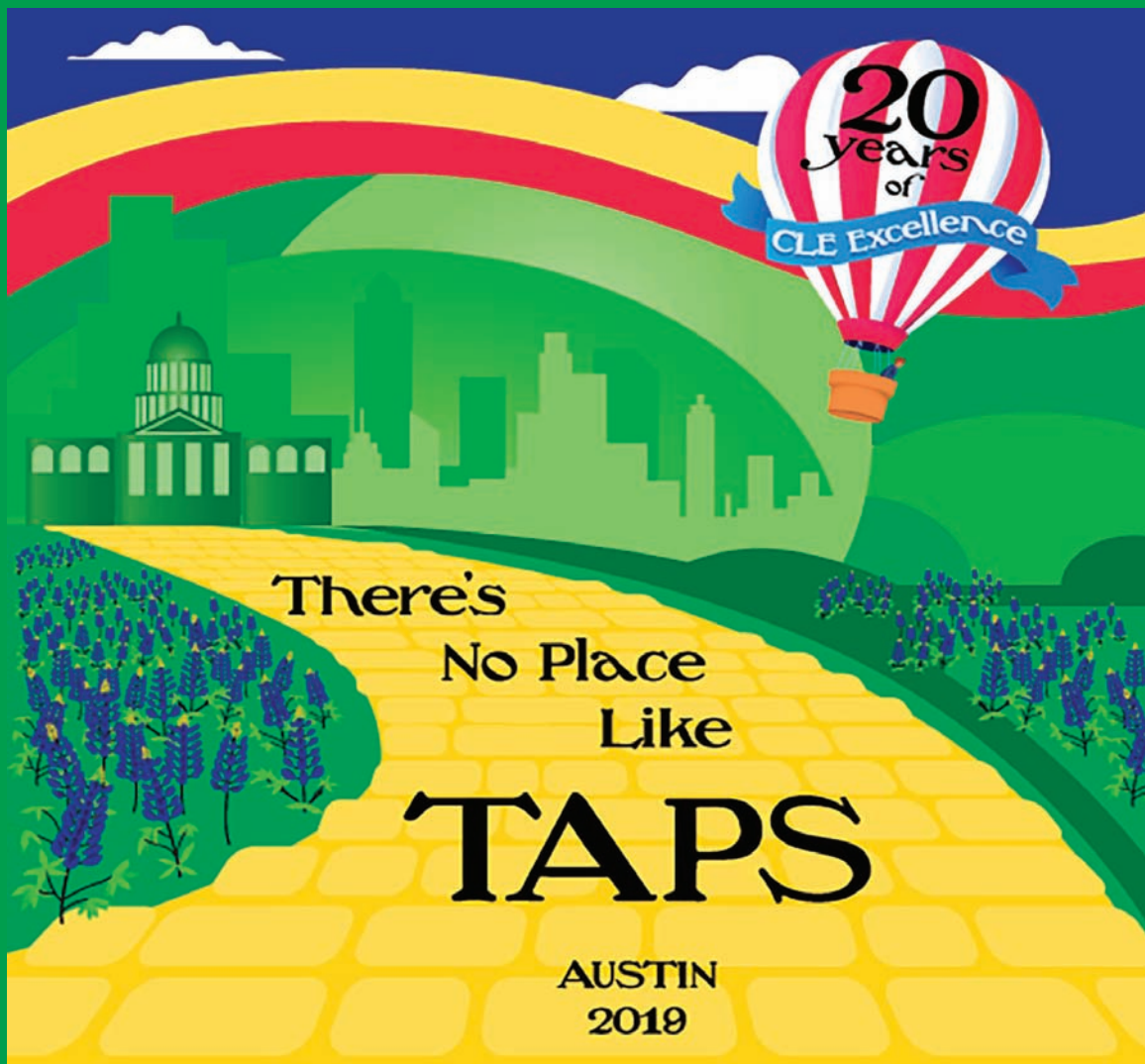


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Texas Advanced Paralegal Seminar
A Three Day Multi-Track CLE
September 18, 2019 – September 20, 2019
DoubleTree—Austin, TX

REGISTRATION

(Registration is ONLY available online [HERE](#))

Three-Day Registration

- Admission to all CLE programs, socials and attendee luncheon
- Seminar materials downloaded prior to event and available on TAPS App
- Admission to the Thursday Exhibit Hall featuring legal products and services
- Complimentary Continental Breakfast on Thursday and Friday
- Complimentary ticket to the Friday Attendee Luncheon
- Complimentary ticket to the Wednesday Welcome Social and Thursday Networking Social

One-Day Registration

- Admission to one day of CLE (Wednesday/Thursday socials and Friday Luncheon are an additional fee)
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HOTEL ACCOMMODATIONS

The DoubleTree Hotel is located at 6505 Interstate Highway 35 North, Austin, TX 78752. The hotel reservation deadline is August 18, 2019. Reservations must be booked and cancelled through The DoubleTree. Guest room rate is \$149.00 for single/double. All guest rooms are listed under TAPS 2019. To reserve a guest room, either [register online](#), or call 1-800-866-3126 and reference the group code TAP. Note: If the desired room you are reserving is not available online, please call 1-800-866-3126. The hotel offers Day Self-Parking at \$5.00 per day and Overnight Self-Parking at \$10.00 per day.

www.txpd.org/taps

SOCIALS

The Excellence of TAPS gets started with our “REGALLY LEGALLY NETWORKING SOCIALLY in the LAND OF Oz”Tin” on Wednesday night at the DoubleTree. There will be networking with our wonderful vendors. Enjoy the cocktail hour (cash bar) with drinks and snacks while you visit. The excitement is just beginning: we still have plenty of time for more CLE and fun!



On Thursday evening you will be transported to the Austin Public Library for “THE EMERALD GALA — Celebrating 20 years of TAPS”. This will be an enchanting evening socializing with your TAPS friends, dinner and entertainment by Austin’s own [BAR AND GRILL SINGERS!](#) You will also have the opportunity to visit one on one with your TAPS Emerald Gala [Sponsoring Vendors](#). This will be a wonderful celebration of the Paralegal Division’s 20 years of providing Excellent CLE!



Keynote Speaker

KEY NOTE SPEAKER

Honorable Darlene Byrne



The Honorable Darlene Byrne has served as presiding judge of the 126th Judicial District Court in Travis County since January 2001. Prior to her election in 2000, she practiced for thirteen years in the areas of employment, commercial and governmental entity litigation. She is a Commissioner on the Texas Children's Commission. She is a past President

of the National Council for Juvenile and Family Court Judges and a past Judge of the Year of National CASA, Texas CASA and CASA of Travis County. She is the present recipient of The Voice award of Foster Angels and a past recipient of the Seedling Foundation Fab Five Award. She is currently on the Judicial Council for National CASA, is an Advisory Council member for TexProtects, Partnerships for Children and the Seedling Foundation, is the Chair of the Texas Statewide Collaborative for Trauma Informed Care and on the Editorial Review Board for NCJFCJ's Juvenile and Family Court Journal. Judge Byrne is a member of the Travis County Juvenile Justice Board, the founding judge of the Travis County Family Drug Treatment Court and the Travis County Model Court of Children, Youth and Families. She has served on many boards and committees related to law and child welfare as well as community organizations.

KEY NOTE ADDRESS: "Oh, The Ethical Places You Will Go!"

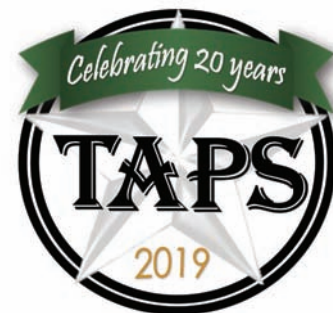
FRIDAY MORNING SPECIAL SESSION

TBLS Preparation Panel Discussion

A panel of seasoned Texas Board of Legal Certified Paralegals from various practice areas will be available to answer all your questions about preparing for and taking the TBLS Certification Exam. Additionally, Molly Galvez with Texas Board of Legal Specialization will also be part of the panel to answer your TBLS paralegal certification questions.

Established by TBLS in 1994, the paralegal certification program recognizes the quality services of paralegals who have achieved a level of special knowledge in a particular area of law. The program is the only state organization authorized to certify paralegals as specialists in specialty areas of law: Bankruptcy Law, Civil Trial Law, Criminal Law, Estate Planning & Probate Law, Family Law, Oil, Gas & Mineral Law, Personal Injury Trial Law, and Real Estate Law. There are currently 398 elite Board Certified Paralegal in Texas.

Join us on Friday to find out how you can become one too!



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Register Online Now! - - www.txpd.org/taps

Highlighted Speakers



M. Jack Martin, III

M. Jack Martin, III is President of Martin, Frost & Hill, P. C., an Austin based law firm focused on alcoholic beverage related matters for a wide range of clients. For nearly 30 years, Mr. Martin has been assisting clients at all levels of the alcoholic beverage industry

in organizational, licensing, advertising/promotional and compliance matters and defending them in administrative actions brought by the Texas Alcoholic Beverage Commission. Mr. Martin has also been involved in lobbying efforts before the Texas legislature and the rule-making process before the TABC, having served on a number of ad hoc committees of industry members and TABC staff to craft rules designed to implement the requirements of the Texas Alcoholic Beverage Code.

www.txpd.org/taps



Judy Kostura

Judy Kostura is with Judge, Kostura & Putnam, P.C. Judy specializes in litigation including automobile collisions, dram shop, premises liability, wrongful death, burn injuries, driving while intoxicated injury, attack by vicious animals, trucking industry collisions and medical negligence.

She will present "Ethics of Redacting Medical Records" at TAPS 2019.

These an many other speakers will provide up to 13 hours of advanced level CLE at TAPS 2019 - Don't Miss Out!



Leigh De La Reza

Leigh De La Reza is with Noelke Maples St. Ledger Bryant, LLP. Leigh has a special knack for high conflict cases and difficult property issues. Leigh has successfully litigated intellectual property disputes, business valuations, and reconstituted estates due to the waste

of assets. She has even won Daubert challenges excluding expert witnesses from testifying for the opposing party. Additionally, Leigh has successfully tried several family law trials to a jury.

Leigh is Board Certified in Family Law by the Texas Board of Legal Specialization. She is a member of the Texas Academy of Family Law Specialist and a Fellow of the prestigious American Academy of Matrimonial Lawyers. She is a member of the Family Law Council of the State Bar of Texas, a member of the Family Law Section of the State Bar of Texas, as well as the Past-President of the Austin Bar Association Family Law Section. Leigh is a frequent speaker at family law courses and seminars, and the author of numerous family law articles and publications..

REGISTER EARLY AND SAVE!

Deadline for early registration is August 6, 2019. All online registrations received beginning August 7, 2019 will be subject to a \$35 late fee. On-Line Registration ends September 9. Registration is available ONLINE ONLY at www.txpd.org/taps. Credit card, check or money order is accepted as payment. There is a \$5.00 handling fee for payment by check or money order. After September 9, 2019 only on-site registration will be accepted.

To be eligible for member pricing you must be a member of the Paralegal Division or apply for membership no later than August 16, 2019.



State Bar of Texas
Paralegal Division



TAPS PRICES

Three-Day Registration

PD Member Registration Fee	\$325*
Non-PD Member Registration Fee	\$425*

One-Day Registration

PD Member Registration Fee	\$180**
Non-PD Member Registration Fee	\$280**

Additional Fees/Information

Box Lunch on Thursday	\$15
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* Registration Fee includes ticket to Wednesday social, Thursday social and Friday luncheon

** Social and luncheon tickets can be purchased at an additional fee

TAPS T-Shirt - Complimentary with registration

Social Tickets (prices per person)

WEDNESDAY: "Regally Legally Networking Socially in the Land of Oz'tin"

One-Day Attendee	\$15
Wednesday Social added Guest	\$25

THURSDAY: "The Emerald Gala—Celebrating 20 Years of TAPS"

One-Day Attendee	\$45
Thursday Social added Guest	\$60

FRIDAY LUNCHEON: "TAPS—Finale & Your Annual Meeting Too!"

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SCHEDULE



SPONSORS

Wednesday, September 18

Registration	8:00 AM—4:00 PM
Presentations	9:00 AM—5:00 PM
Social	5:15 PM—6:45 PM

Thursday, September 19

Registration	7:00 AM—4:00 PM
Exhibit Hall	7:00 AM—3:00 PM
Presentations	8:00 AM—4:00 PM
Social	6:00 PM—9:30 PM

Friday, September 20

Registration	8:00 AM—10:00 AM
Presentations	8:30 AM—12:00 PM
Luncheon	12:00 PM—1:30 PM

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PARALEGAL DIVISION ANNOUNCES TAPS 2019 SCHOLARSHIP

For the upcoming 2019 Texas Advanced Paralegal Seminar (TAPS), a three-day CLE seminar, the PARALEGAL DIVISION of the State Bar of Texas will award up to two (2) educational scholarships for the three-day registration to attend the TAPS 2019 seminar, *"There's No Place Like TAPS – 20 Years of CLE Excellence."* Below please find the guidelines and application for applying for this scholarship.

1. The Recipient must be a member (or apply for membership) of the Paralegal Division of the State Bar of Texas.
2. To apply for a TAPS scholarship, the applicant is required to give a written essay on the following:
"You have plenty of courage, I am sure," answered Oz. "All you need is confidence in yourself. There is no living thing that is not afraid when it faces danger. The true courage is in facing danger when you are afraid, and that kind of courage you have in plenty."—L. Frank Baum, *The Wonderful Wizard of Oz*

What does it mean to be a confident paralegal in the workplace, in the field, and in the community? Describe your experiences and how CLE contributes to this.

The essay must be two (2) pages in length and double-spaced.

3. To apply for a TAPS scholarship, the applicant is **required to**

provide two (2) letters of personal references, which describe the applicant's involvement in the paralegal profession.

4. Financial need shall be a contributing factor, but not a requirement. However, if two or more applicants are tied in meeting the criteria for the scholarship, financial need shall be the determining factor.
5. Recipient(s) are required to volunteer a minimum of three hours on-site during the event.

Other

1. No money will be sent directly to the recipient.
2. The scholarship for TAPS shall cover the cost of the three-day registration, but does not include socials, travel, or hotel expenses.
3. The scholarship selection committee for reviewing scholarship applications for TAPS shall be composed of the Chair of the TAPS Planning Committee, one Planning Committee Sub-Committee Chair, and the Board Advisor to the TAPS Planning Committee.

The Paralegal Division of the State Bar of Texas will award scholarships for TAPS 2019 which will cover the cost of registration in accordance with the TAPS scholarship guidelines.

TAPS 2019 SCHOLARSHIP APPLICATION

IMPORTANT: ALL APPLICATIONS FOR A SCHOLARSHIP FOR TAPS 2019 MUST BE RECEIVED BY MONDAY, JULY 15, 2019.
DATE OF TAPS 2019: September 18–20, 2019, Austin, TX

Name _____ PD Membership No. _____

Home Address _____

Home Telephone _____ E-mail Address _____

Work Address _____

Work Telephone _____ Fax Number _____

Employer _____

Are you a member of a local paralegal organization that offers a scholarship award? _____

Give a detailed description of your reason for seeking a scholarship to TAPS 2019: _____

Give a detailed description, if any, for your reasons for financial need: _____

Attach two (2) personal references and your written essay to this application. Applications should be mailed to: Megan Goor, Scholarship Chair of the TAPS Planning Committee, The Brender Law Firm, 600 Eighth Avenue, Fort Worth, TX 76104-2020 or email to: president-elect@txpd.org. *Scholarship recipients will be notified by letter or email by July 25, 2019 and must accept and be registered for TAPS by August 5, 2019.*

Date

Applicant's Signature

Attach any additional explanations.

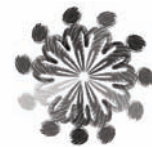
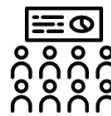


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- ◆ Statewide CLE Depository
- ◆ Track MCLE and CLE credit using PD's App
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- ◆ Discounted Registration for Texas Advanced Paralegal Seminar
- ◆ www.MyTexasBar.com - legislative tracking, form access,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

Membership criteria and additional member benefits can be found at www.txpd.org under "Membership" tab. All applications are accepted and processed online at www.txpd.org/apply. Dues payment accepted by check, money order or credit card. Questions regarding membership in the Paralegal Division can be forwarded to pd@txpd.org or memberchair@txpd.org.

A Division with Vision... Empowering Paralegals!

529 Savings Plans

By Craig Hackler, Financial Advisor, Raymond James Financial Services



529 savings plans are tax-advantaged education savings vehicles and one of the most popular ways to save for college today. They can also be used to save for K-12 tuition. Much like the way 401(k) plans changed the world of retirement savings a few decades ago, 529 savings plans have changed the world of education savings.

Tax advantages and more

529 savings plans offer a unique combination of features that no other education savings vehicle can match:

- **Federal tax advantages:** Contributions to a 529 account accumulate tax deferred and earnings are tax free if the money is used to pay the beneficiary's qualified education expenses. (The earnings portion of any withdrawal not used for qualified education expenses is taxed at the recipient's rate and subject to a 10% penalty.)

- **State tax advantages:** States are free to offer their own tax benefits to state residents, such as a tax deduction for contributions.
- **High contribution limits:** Most plans have lifetime contribution limits of \$350,000 and up (limits vary by state).
- **Unlimited participation:** Anyone can open a 529 savings plan account, regardless of income level.
- **Wide use of funds:** Money in a 529 savings plan can be used to pay the full cost (tuition, fees, room and board, books) at any college or graduate school in the United States or abroad that is accredited by the Department of Education, and for K-12 tuition expenses up to \$10,000 per year.
- **Professional money management:** 529 savings plans are offered by states, but they are managed by designated financial companies who are responsible for managing the plan's underlying invest-

ment portfolios.

- **Flexibility:** Under federal rules, you are entitled to change the beneficiary of your account to a qualified family member at any time as well as roll over (transfer) the money in your account to a different 529 plan once per calendar year without income tax or penalty implications.
- **Accelerated gifting:** 529 savings plans offer an estate planning advantage in the form of accelerated gifting. This can be a favorable way for grandparents to contribute to their grandchildren's education while paring down their own estate, or a way for parents to contribute a large lump sum. Under special rules unique to 529 plans, a lump-sum gift of up to five times the annual gift tax exclusion amount (\$15,000 in 2019) is allowed in a single year, which means that individuals can make a lump-sum gift of up to \$75,000 and married couples can gift up to \$150,000. No gift tax will be owed, provided the gift is treated as having been made in equal installments over a five-year period and no other gifts are made to that beneficiary during the five years.
- **Transfer to ABLE account:** 529 account owners can roll over (transfer) funds from a 529 account to an ABLE account without federal tax consequences. An ABLE account is a tax-advantaged account that can be used to save for disability-related expenses for individuals who become blind or disabled before age 26.

Choosing a 529 savings plan

Although 529 savings plans are a creature of federal law, their implementation is left to the states. Currently, there are over 50 different savings plans available because many states offer more than one plan. You can join any state's 529 savings plan, but this variety may create confusion when it comes time to select a plan. Each plan has its own rules and restrictions, which can change at any time. To make the process easier, it helps to consider a few key features:

- **Your state's tax benefits:** A majority of states offer some type of income tax break for 529 savings plan participants,

such as a deduction for contributions or tax-free earnings on qualified withdrawals. However, some states limit their tax deduction to contributions made to the in-state 529 plan only. So make sure to understand your state's rules.

- **Investment options:** 529 savings plans vary in the investment options they offer. Ideally, you'll want to find a plan with a wide variety of investment options that range from conservative to more growth-oriented to match your risk tolerance. To take the guesswork out of picking investments appropriate for your child's age, most plans offer age-based portfolios that automatically adjust to more conservative holdings as your child approaches college age. (Remember, though, that any investment involves risk, and past performance is no guarantee of how an investment will perform in the future. The investment you choose may lose money or not perform well enough to cover college costs as anticipated.)
- **Fees and expenses:** Fees and expenses can vary widely among plans, and high fees can take a bigger bite out of your savings. Typical fees include annual maintenance fees, administration and management fees (usually called the "expense ratio"), and underlying fund expenses.
- **Reputation of financial institution:** Make sure that the financial institution managing the plan is reputable and that you can reach customer service with any questions.
- **User experience:** Is the plan's website easy to use? Can you easily take care of routine tasks online, such as set up automatic monthly contributions, change your contribution amount, research plan investments, find your rate of return, or request a withdrawal?

With so many plans available, it may be helpful to consult an experienced financial professional who can help you select a plan and pick your plan investments. In fact, some 529 savings plans are advisor-sold only, meaning that you're required to go through a designated financial advisor to open an account.

Account mechanics

Once you've selected a plan, opening an account is easy. You'll need to fill out an application, where you'll name a beneficiary and select one or more of the plan's investment portfolios to which your contributions will be allocated. Also, you'll typically be required to make an initial minimum contribution, which must be made in cash or a cash alternative. Thereafter, most plans will allow you to contribute as often as you like. This gives you the flexibility to tailor the frequency of your contributions to your own needs and budget, as well as to systematically invest your contributions by setting up automatic monthly transfers from your bank account.

As for investment changes, beware that under federal law you are allowed to exchange your existing plan investments for new investments only twice per year. In other words, if your existing plan funds are currently invested in plan portfolios A & B but you want to change them to plan portfolios C & D, you can do this only twice per calendar year. However, you generally have unlimited say in how your *future* contributions will be invested.

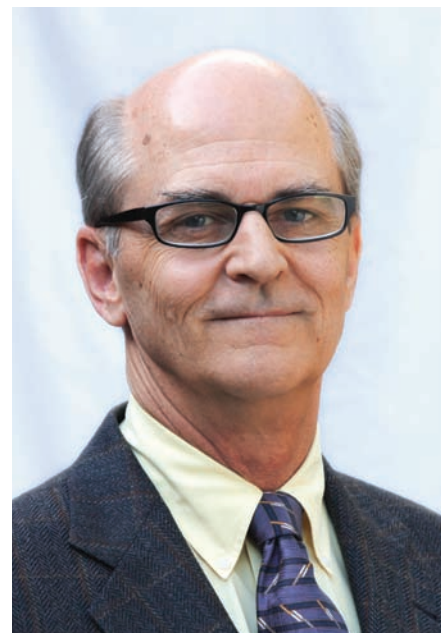
You will also be able to change the beneficiary of your 529 savings account to a qualified family member with no income tax or penalty implications.

529 prepaid tuition plans—a distant cousin

There are actually two types of 529 plans—savings plans and prepaid tuition plans. The tax advantages of each are the same, but the account features are very different. A prepaid tuition plan lets you prepay tuition at participating colleges, typically in-state public colleges, at today's prices for use by the beneficiary in the future. 529 prepaid tuition plans are generally limited to state residents, whereas 529 savings plans are open to residents of any state. Prepaid tuition plans are much less common than savings plans.

Note: Investor should consider the investment objectives, risks, charges, and expenses associated with 529 plans before investing; specific plan information is available in each issuer's official statement. There is the risk that investments may not perform well

enough to cover college costs as anticipated. Also, before investing, consider whether your state offers any favorable state tax benefits for 529 plan participation, and whether these benefits are contingent on joining the in-state 529 plan. Other state benefits may include financial aid, scholarship funds, and protection from creditors.



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Problems your clients or you may not anticipate when using Texas Power of Attorney forms covering Digital Assets.¹

By Joseph Jacobson²

I. Introduction to the Statute and the Problems.

A. UFADAA, the Revised Version (RUFADAA), and Texas' enactment of its version "TRUFADAA" (TexasRUFADAA).

In 2014, the Uniform Law Commission (ULC) updated fiduciary law taking into account digital assets by creating and releasing the Uniform Fiduciary Access to Digital Assets Act.³ This model act was revised and was released as the Fiduciary Access to Digital Assets Act. Revised (2015) ("RUFADAA," the Revised UFADAA).

Some attorneys and scholars may find it unusual or noteworthy that after significant deliberation, the ULC issued the UFADAA, and yet within a year had to revise the act and reissue it as RUFADAA.

In 2017, Texas passed its version of RUFADAA making only slight changes (known as TRUFADAA). That act is codified beginning at Texas Estate Code 62001.001.

Prof. Gerry Beyer⁴ was Chair of the Legislative Committee of the Real Estate Probate and Trust Law Section (REPTL) that reviewed the ULC's version of RUFADAA. His committee offered statutory changes and commentary to make it compatible with Texas laws. This author was one of REPTL's Legislative Committee members working with Prof. Beyer.

Texas was among the most recent states to enact the law which has been adopted by

about 40 states and the U.S. Virgin Islands.⁵

B. May an attorney properly deny a Digital Assets' Fiduciary's request to access a Principal's digital legal documents including attorney-client privileged communications (emails) between the attorney and the Principal?

A lacuna exists in Texas case law so the full impact of the definition of a digital asset is not settled.⁶ A digital asset may include information that is subject to the attorney-client privilege as to the original Principal, i.e., the person granting the fiduciary access to the digital assets.

Often digital assets are not enumerated. They are identified broadly by their characteristic—the asset is digital. Since in

digital form, the assets may be easily transferred. A person may have digital assets stored on servers at Microsoft's Azure or in Microsoft's 365 Office. These same assets may be stored simultaneously or transferred to AWS (Amazon Web Services) or some other Cloud Service Provider (CSP). Instagram, Facebook, and Whatsapp are also considered digital assets even though many people do not think of these social media sites as Cloud Computing or places where digital assets may be stored.

The statute properly allows for this flexibility appropriate to the identity of the asset. It would be difficult and cumbersome for a Principal to continually update his or her digital power of attorney to include the Principal's administrative changes. These matters could be communicated outside the TRUFADAA compliant document.

Even if there are no changes in CSPs, the Principal would also want to update the Fiduciary as to UserIDs and Passwords necessary to access the various digital accounts. Under the best practices these UserIDs and Passwords would be changed at least annually. User IDs and Passwords may be best transmitted in an encrypted form as between the Principal and the Fiduciary, rather than stated within the TRUFADAA document. The TRUFADAA



Power of Attorney may be seen by people which the Principal would not want to have access to the digital data.

A "digital asset" does not include the asset or liability which underlies the digital representation. So for example, a Fiduciary's controlling a digital deed for real estate does not include the Fiduciary's control over the real property described in the deed.

If your attorney drafts a will or a trust, then that document is a digital asset. That asset is an electronic record in which you, as the Grantor or Testator has a right or interest. You may have communicated with your attorney through emails, and your email account would be a digital asset which your Fiduciary under TRUFADAA would also have access.

These email communications between your attorney and you could be accessed through your attorney's records, as well as, the records which you may have kept in your email account.

The concern that is troubling some attorneys, particularly those with an estate planning practice, is, "What is the appropriate response when a Digital Assets Fiduciary seeks the will or trust documents and all digital correspondence between the Principal and the law firm relating to the will or trust?"

The attorney that performed the estate planning would want to determine at least 2 issues:

1. Does the TRUFADAA-compliant Power of Attorney reach the digital version of the will or trust and the digital communications that would otherwise be protected between the Principal and his or her attorney through attorney-client privilege?
2. Does granting the Fiduciary's access to the attorney-client communications constitute a waiver of the attorney-client privilege by the Principal-Client?
 - a) Was the Principal/Client sufficiently informed that the Fiduciary's exercise of access to the otherwise confidential communications would constitute a waiver of the attorney-client privilege?
 - b) Was the Fiduciary informed sufficiently that the Fiduciary's exercise

of access to the otherwise confidential communications would constitute a waiver of the attorney-client privilege?

Currently, Texas does not have a case that addresses these issues with TRUFADAA.

C. Is a Digital Assets Fiduciary liable for Digital Asset Information in the Principal's file that may or may not be with the Principal's attorney?

Assume Jane grants Bob her Power of Attorney over certain real estate and also appoints Bob as her Digital Assets Fiduciary. Jane is in Paris, France, and asks Bob to sign the Deed for her conveyance of Dangerous Acres to Mr. Une Whitting. Bob says "Sure," shows up and signs the Deed and other documents making reps and warranties about undisclosed liabilities.

Mr. Une Whitting sues Bob and *you* (Jane's attorney). How could that be? Assume that Jane had an engineering report delivered to her as an attachment to an email in her Xmail Account that is a digital asset. This engineering report in digital form discusses the huge quantities of PERC (perchloroethylene) that are under Dangerous Acres.

- Since Bob is Jane's Digital Assets Fiduciary, does Bob have an obligation to review Jane's Xmail account before the Dangerous Acres closing?
- Since Jane emailed the report to you, her attorney, do you have an obligation to warn Bob about signing the deed and making the real estate reps and warranties about no undisclosed liabilities or adverse findings regarding the property?
- If you were to warn Bob about making representations and warranties, is that a violation of Jane's attorney-client privilege?
 - Is Bob considered like Jane and has to be treated as your client, and warned not to sign anything about undisclosed liabilities?
 - Assume you already warned Jane about not making representations about undisclosed liabilities; so, do

you have to warn Bob, or is warning Jane sufficient?

- What if you as Jane's attorney are unaware Bob is going to sign the deed using Jane's grant of her Power of Attorney to Bob?
- Does Bob have the obligation to find you (Jane's attorney) and ask you about digital documents (assets) that may be relevant to the real estate closing?
 - What if Jane did not forward the engineering report on PERC to you?
 - Should you ask Bob to go through Jane's Xmail account and check for facts (the engineering report) that raises potential liabilities? In this way, if Bob finds anything, you (Jane's attorney) can review and offer proper legal advice to both Bob and Jane.
- Do you as Jane's attorney have an obligation to advise Bob to consider having his own counsel review his obligations and liabilities under the Digital Power of Attorney since you cannot represent both Jane and Bob?

These questions are not answered within RUFADAA or TRUFADAA. But they are important and involve a great deal more planning and discussion by you (Jane's attorney) with both the Principal (Jane) and the Digital Assets Fiduciary (Bob) than anyone may first anticipate.

RUFADAA⁷ creates an unusual problem for Digital Asset Fiduciaries who may be required to file FinCEN records.

Even if you do not file a federal tax return, a person with signature authority for a foreign financial account must file a "Report of Foreign Bank and Financial Accounts (FBAR), through the (Financial Crimes Enforcement Network's (FinCEN's) BSA E-Filing System.⁸ This report identifies individuals who have signatory authority over an account(s) with \$10,000 in assets at any time during a year.

A curious issue arises out of TRUFADAA, that would be applicable to individuals in Texas as well as, individuals in other states under RUFADAA. Let's examine this example:

- Assume Ashley has a \$7,000 digital asset (a bank account in a foreign country).

Ashley designates Sandy as a Fiduciary of her digital assets, including this foreign bank account.

- Assume Michelle has a \$6,000 digital asset (a bank account in a foreign country). Michelle designates Sandy as a Fiduciary of her digital assets, including Michelle's foreign bank account.

As a Digital Asset Fiduciary, Sandy now has control over 2 foreign asset accounts, and the total value of the 2 accounts is \$13,000.

Since Ashley's account is less than \$10,000 Ashley does not have to file an FBAR form; the same is true of Michelle since her account is less than \$10,000.

Sandy has a different circumstance. Since Sandy is a Digital Asset Fiduciary, she has authority over 2 accounts that, combined within the past year, had a value over \$10,000. Sandy has an obligation to file FBAR.

It would be best if Sandy were to accept the responsibility of a Digital Assets Fiduciary with the understanding that she would have to file a FBAR. In that way, Sandy could inform both Ashley and Michelle that their accounts would be disclosed to the federal government.

Ashley and Michelle may not be aware that they would have to file a FBAR since at no time were either of their accounts worth over \$10,000 in the last year. Their advisors (attorneys as well as accountants) may not have mentioned this possibility to their respective clients.

Since the obligation to file rests on Sandy, then she would suffer the penalties for failure to file. These penalties are significant.

Ashley and Michelle may think of the Digital Assets Fiduciary as being more centered on their Instagram, Facebook, and other social media accounts. When independently designating Sandy as their Digital Assets Fiduciary, a foreign account may *not* be within their perceived scope of a digital asset.

For Sandy, failing to file a FBAR could result in fines of \$10,000 per year for each year she failed to file for up to 6 years, or up to 50% of the value of the account(s). The loss of 50% of the 2 accounts is possible even though the accounts are not

Sandy's since Sandy has signature authority over the accounts. If Ashley and Michelle find their accounts diminished by 50%, then Sandy may find herself blocked on Facebook, and Ashley and Michelle may be suing Sandy claiming Sandy breached her fiduciary duty by not filing FBAR.

Before accepting a position as a Digital Assets Fiduciary, it is best to require a full disclosure of all Digital Assets, and a request that this list be updated periodically. Sandy's attorney may even ask that Ashley and Michelle represent that they do not have any control over a foreign bank account or other digital assets.⁹

RUFADAA creates a different, but similarly unusual problem for Digital Asset Fiduciaries who may be required to file IRS Form 8938.

IRS Form 8938 requires reporting foreign financial assets if the total value "in which you have an interest" is more than the threshold. A Digital Fiduciary's control over a Digital Asset, even though the asset is not owned by the Fiduciary would be sufficient to trigger the reporting requirement. For example, for an unmarried taxpayer, the filing threshold is \$50,000 in value on the last day of the year or more than \$75,000 at any time during the year.¹⁰ Even if the Principal filed a Form 8938, the Fiduciary has his or her own obligation to file that form.

The foreign accounts under control of the Digital Asset Fiduciary are aggregated to determine the threshold amount which requires Fiduciary to file Form 8938. The analysis of who has to file is similar to the calculations regarding filing FinCEN Form 114 in the preceding section "C" for Principals Ashley and Michelle, and Digital Asset Fiduciary Sandy.

As before with the FinCEN filing, Digital Asset Fiduciary Sandy may have an obligation to file, even though her Principals Ashley and Michelle would not have those obligations. Ashley and Michelle would want to know from Sandy (assuming she would know) whether Sandy would have to disclose the accounts that either of them hold, while neither Ashley nor Michelle would have to file Form 8938.

IRS analysis and FinCEN determinations of exceptions to the filing should be conducted by a tax attorney; this paper is not to be considered legal advice.

This author does not practice tax law. Exceptions and exemptions from filing responsibilities may exist or maybe could be drafted within the Digital Asset Power of Attorney document. This author wants to raise the issues associated with control over digital assets, and direct each attorney to make his or her own determinations as to who has the responsibility to file FinCEN or IRS Forms.

As discussed previously, penalties for failure to file FinCEN forms could be draconian, and failure to file IRS forms are significant. Without appropriate disclosures and investigation by the attorney advising the parties, the Client/Principal or the Fiduciary may have claims against the attorney for damages due to negligent failure to disclose material information. Neither the Client/Principal nor the Fiduciary could make an informed decision if critical information regarding federal government filing obligations and penalties are missing.

II. Is appointing a Digital Assets Fiduciary similar to assigning a cause of action by a Beneficiary in an ERISA Trust?

An assignment of a claim for insurance coverage is not so broad so as to include an assignment of rights to sue an administrator or trustee for breach of fiduciary duty, or to include the beneficiary/assignee's right to waive attorney-client privilege. So, the "fiduciary exception" to the assertion of attorney-client privilege is inapplicable in these instances. A federal court in Texas ruled on this issue by examining the Federal Rules of Evidence and existing case law.

Advanced Physicians, S.C., (Advanced) received an assignment from Plan beneficiaries for "their rights as participants in the Plan and their causes of action against the Plan to Advanced."¹¹ Under authority of this assignment, Advanced sued Cigna for violation of the Employee Retirement Income Security Act of 1974 ("ERISA") to recover beneficiaries' benefits under the Plan (payments). In discovery, Cigna claimed some information was subject

to the attorney-client privilege. Plaintiffs sought discovery through a motion to compel.

Cigna argued that the assignment to Advanced to recover payments from the Defendants was not so broad as to include an assignment of the right to waive the Plan beneficiaries' attorney-client privilege against Cigna. The appellate court agreed ruling the assignee Advanced does not become a "beneficiary" of the Plan for all purposes just because it had an assignment to collect *payments* due a beneficiary under the plan.

Advanced tried to assert the "fiduciary exception" to attorney-client privilege assertions by a Trustee or Administrator when sued by a Beneficiary. The Trustee has no independent interest in trust administration; so, any legal advice it receives is on behalf of the beneficiary.¹²

Additionally, the appellate court found the assignment focused on recovery of payments from an insurance company and was not so specific to include a beneficiary's assigning to Advanced breach of fiduciary duties claims against Cigna (the ERISA administrator).

The appellate court used traditional rules of construction requiring assigned rights to be specific. Since Advanced was unable to bring a suit against Cigna for breach of fiduciary duties (that right was not assigned), then Advanced did not have the right to assert the "fiduciary exception" to the attorney-client privilege on behalf of the Plan Beneficiaries. The appellate court ruled Advanced was not allowed to access the communications between the Cigna and its attorneys which occurred *before* Advanced filed its lawsuit.

III. Does a Defendant's assignment of a Stowers claim against his insurance company include assignment of the right to waive attorney-client privilege?

Cooper was covered by Allstate Insurance. A claim was made against Cooper. Cooper assigned his Stowers and other contractual claims to Joseph. Joseph then brought an action against Allstate. At issue is whether Cooper waived his attorney-client privilege in Joseph's discovery proceedings in the Stowers claims against Allstate.

The assignment read in part as follows:

"I, the undersigned, David Louis Cooper . . . here assign, grant, and convey, all rights, title and interest in and to any causes of action that I may have against Allstate . . . arising out of or by virtue of, my insurance policy or policies, or claims made by Harold Joseph and Mary Joseph . . . against me, including but not limited to any causes of action I may have pursuant to the Stowers Doctrine, Texas Insurance Code, breach of contract, or any other common law fraud, misrepresentation, or other causes of action."

In *Re David Louis Cooper*, No. 09-01-122 CV, court of Appeals of Texas, Beaumont, 47 S.W.3d 206, 208 (Tex. App.-Beaumont 2001).

The trial court found that an assignment or waiver of Cooper's attorney-client privilege was encompassed or implied in his assignment of the Stowers action. Allstate appealed.

The appellate court found the assignment inadequate to constitute a waiver of Cooper's attorney-client privilege. The appellate court noted, that there is no language in the assignment specifically referencing the attorney-client privilege. Nor is there any language in the assignment that obligates Cooper to participate in Joseph's claim against Allstate.

The appellate court also stated the attorney-client privilege may be waived in accordance with Tex. R. Evid. 511(b)(1), but the court did not find any previous production of documents by Cooper waived the privilege, since all those documents were properly redacted.

Advanced and Cooper offer some direction for further analysis, but written communications and disclosures by Principals and Fiduciaries will be most helpful for attorneys' drafting for compliance with TRU-FADAA, or in other states, RUFADAA.

Advanced distinguishes that an assignee of cause of action arising from an ERISA Plan from a Plan Beneficiary does not stand as the Beneficiary. The Digital Asset Fiduciary through the Power of Attorney

does stand exactly as the Principal, unless otherwise limited. The Fiduciary could make any decision and take any action consistent with the Principal's direction in the Power of Attorney.

Cooper emphasizes the importance of being very specific as to what powers are granted or denied when referencing the Digital Assets. The court discussed a failure to reference the attorney-client privilege or its waiver. Without this reference, it was easy for a court to hold the power to waive attorney-client privilege was not granted, and there was no waiver.

You as an attorney are faced with determining whether a power of attorney for digital assets in favor of a Fiduciary, requires a special description of the Principal's attorney-client privilege associated with the digital assets.

- Is the Principal aware that digital assets could mean access to a will or trust or a foreign asset account or some other legal document which the Principal does not want the Fiduciary to examine?
- Does the Principal want the Fiduciary to have the powers to access the will, the trust, or other digital asset?
- Does the Principal want the Fiduciary to have access to the digital asset, but not to the Principal's digital communications with his or her attorney regarding the digital asset?
- If the digital asset is more than a mere document but has value (such as a foreign bank account), has the Principal made the Fiduciary aware of the responsibilities that are required under the Power of Attorney?
- Is there a discussion in the Power of Attorney about costs for filing FBAR reports or other similar documents?
- Unlike the Assignee in *Advanced* (with respect to Plan Beneficiaries), does the Digital Assets Fiduciary become equivalent to the Principal *for all purposes*? Does the Principal want the Digital Asset Fiduciary to hold these powers?
- Is a Digital Assets Fiduciary a "client's representative" under Tex. R. Evid. 503?¹³

This last issue regarding the Digital Assets Fiduciary acting as a "client repre-

sentative" may be addressed in discussion with the Principal. If the Principal wants to limit whether the Fiduciary may seek and receive legal advice *on behalf of the Principal*, then the Power of Attorney Document may include this limitation. If the Fiduciary believes that legal advice is required for it to fulfill the duties as the Fiduciary determined, then the Fiduciary may resign.

Conclusion: Successful use of Digital Asset Fiduciaries requires comprehensive legal analysis, a good checklist, and disclosure to all parties so they may make decisions with informed consent.

Attorneys successfully using TRU-FADAA with their clients and their clients' fiduciaries will require more communications with all parties regarding technology. This level of competence should be expected and has been placed into the Disciplinary Rules.¹⁴

The responsibilities should not be taken lightly by the Principal in granting these powers, nor should the Fiduciary accept a grant of authority and powers as a merely casual accommodation for a friend or acquaintance.

The Principal's attorney's and Principal's disclosures of assets and potential government filing responsibilities would be a minimum in discussions with a Digital Assets Fiduciary, before allowing the Fiduciary to accept the assignment. The attorney may wish to advise the Fiduciary that he or she may want to obtain liability insurance.

1. © Copyright Joseph Jacobson 2019

2. Joseph Jacobson is an attorney in Dallas, Texas where he practices law as it brushes against technology. He is a former adjunct professor at S.M.U. School of Law, and has lectured extensively at Continuing Legal Education courses in Texas and in Illinois. He may be reached at joseph@jacobsonlawyer.com, www.linkedin.com/in/joseph-jacobson-8277a518

3. Katie Robinson, "Uniform Law Commission: An Update for Legislative Lawyers," May 19, 2015, <http://www.ncsl.org/legislators-staff/legislative-staff/research-editorial-legal-and-committee-staff/uniform-law-commission-an-update-for-legislative-lawyers.aspx>

4. Professor Gerry Beyer, Governor Preston E. Smith Regents Professor, Texas Tech University

School of Law. <http://www.professorbeyer.com/Beyer/About.html>

5. Uniform Law Commission, Fiduciary Access to Digital Assets Act, Revised, Legislation, <https://www.uniformlaws.org/committees/community-home?CommunityKey=f7237fc4-74c2-4728-81c6-b39a91ecdff22>

6. "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.' Texas Estates Code 62001.002(8) (2017).

7. This issue is applicable to any person resident in a state which passed an act based on RUFADAA.

8. BSA Electronic Filing Requirements For Report of Foreign Bank and Financial Accounts (FinCEN Form 114), Release Date January 2017 (v1.4), <https://www.fincen.gov/sites/default/files/shared/FBAR%20Line%20Item%20Filing%20Instructions.pdf> link found at U.S. Treasury, Financial Crimes Enforcement Network, "Purpose of the FBAR," <https://www.fincen.gov/purpose-fbar>

9. Mark Aquilio, *Schoolteacher's failure to file FBAR results in \$800,000 penalty*, Journal of Accountancy, December 1, 2018. <https://www.journalofaccountancy.com/issues/2018/dec/fbar-penalty-mindy-norman.html>

10. IRS Instructions for Form 8938 (2018) Statement of Specified Foreign Financial Assets, Department of the Treasury, Internal Revenue Service, November 29, 2018. <https://www.irs.gov/forms-pubs/about-form-8938>

11. *Advanced Physicians, S.C. v. Conn. Gen. Life Ins. Co.* (N.D. Tex. 2019), 2, Case No. 3:16-cv-02355-G, <https://public.fastcase.com/ppbqSQpNDaJE%2F8PliIkoB8OJPrfP8WPpx3nXO%2Fx%2FO6%2BaWOK2Z4isOJD3RaT7tTxlX>

12. *Id.* at 6 citing *United States v. Jicarilla Apache Nation*, 564 U.S. at 165. Specific to ERISA claims, the 5th Cir. recognized this "fiduciary exception" in *Wildbur v. ARCO Chem. Co.*, 974 F.2d 6731, 645 (5th Cir 1992) modified 979 F.2d 1013 (5th Cir. 1992) (per curiam).

13. '(2) A "client's representative" is:

(A) a person who has authority to obtain professional legal services for the client or to act for the client on the legal advice rendered; or

(B) any other person who, to facilitate the rendition of professional legal services to the client, makes or receives a confidential communication while acting in the scope of employment for the client.'

14. "Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, including the benefits and risks associated with relevant technology." Tex. Disciplinary R. Prof. Conduct (1989) 1.01, Comment 8. <https://www.legalethictexas.com/Ethics-Resources/Rules/Texas-Disciplinary-Rules-of-Professional-Conduct/I--CLIENT-LAWYER-RELATIONSHIP/1-01-Competent-and-Diligent-Representation>



Joseph Jacobson has a transaction law practice in the areas of technology, contracts, and commercial real estate. A former board member of the Japan American Society of Dallas, he's served as Chair of the Computer & Technology Section of the State Bar of Texas, and is Vice Chair of the Privacy, Data Breach, and Ecommerce Committee, and the Blockchain Committee, as well as a member of the Texas Business Organizations Code Committee. Mr. Jacobson was an adjunct professor at Southern Methodist University Dedman Law School. He has analyzed, drafted, and supported legislation in every Texas legislative session for over 20 years. He may be reached at joseph@jacobsonlawyer.com, O: 214-361-1700; Google Voice: 214-659-1357.

The Ethics of Recovering Paralegal Fees

Ellen Lockwood, ACP, RP

When attorneys seek to recover fees, the standard is that the fees must be reasonable and, in some cases, justified. In addition to providing redacted copies of itemized invoices, attorneys often utilize experts to testify to the reasonableness of the attorneys' fees.

When seeking to recover fees for paralegal services, the reasonableness standard also applies. However, since paralegals are not regulated in Texas, there are often additional hurdles to overcome for a judge to accept that the paralegal's fees are also recoverable.

Attorneys must often provide evidence that the paralegal is qualified to provide paralegal services. In the absence of paralegal regulation, the best method is to present evidence that the paralegal meets the qualifications set out in the [Texas Paralegal Standards](#). The general definition of a paralegal states as follows:

A paralegal is a person, qualified through various combinations of education, training, or work experience, who is employed or engaged by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of a licensed attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal principles and procedures that, absent such a person, an attorney would be required to perform the task.



The Texas Paralegal Standards outline criteria for minimum qualifications for paralegals, including education, experience, or combination of both. Providing a paralegal's resume and highlighting the relevant education and/or experience is an effective way to demonstrate the paralegal's qualifications.

Attorneys must also demonstrate the paralegal's work was substantive legal work. Again, the Texas Paralegal Standards provide the definition of substantive legal work:

"Substantive legal work" includes, but is not limited to, the following: conducting client interviews and maintaining general contact with the client; locating and interviewing witnesses; conducting investigations and statistical and documentary research; drafting documents, correspondence, and pleadings; summarizing depositions, interrogatories, and testimony; and attending

executions of wills, real estate closings, depositions, court or administrative hearings, and trials with an attorney.

"Substantive legal work" does not include clerical or administrative work. Accordingly, a court may refuse to provide recovery of paralegal time for such non-substantive work. *Gill Sav. Ass'n v. Int'l Supply Co., Inc.*, 759 S.W.2d 697, 705 (Tex. App. Dallas 1988, writ denied).

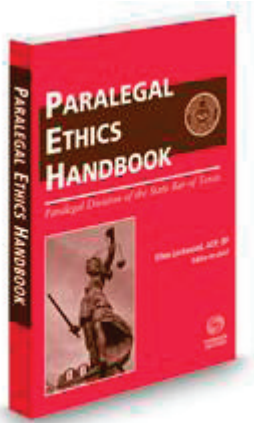
Once the paralegal's qualifications have been proven, and the paralegal's work has been shown to be substantive, then, assuming the attorney's fees have been shown to be reasonable (and, in some cases, justified), in most cases, the paralegal's fees should also be accepted by the court.

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



The Paralegal Ethics Handbook, 2018 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
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Examination for Paralegal Board Certification will be early November in Austin.

GENERAL REQUIREMENTS FOR PARALEGAL CERTIFICATION



minimum of 5 years of paralegal work experience under the direct supervision of a licensed Texas attorney



an assessment of the paralegal's experience and duties showing 50% of their time is devoted to the practice area



30 hours of CLE in the specialty area



completion of a Baccalaureate or higher degree or completion of an accredited paralegal program; OR 2 additional years of paralegal work experience

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Tower Bridge

The PD Travels to London, England

By Stephanie R. Sterling, TBLS-BCP, President

For those of you unable to join us on our trip to London this year, I wanted to invite you on a journey of my fond remembrance of the PD's London trip in which much of it felt like we stepped back in time! It was splendid to experience so much history!

The journey began on April 12th, when a group of 20 departed from different parts of Texas to join together at London's Heathrow International Airport. We arrived in London on the early morning of Saturday, April 13th and jumped right into seeing and experiencing London. We took our first Tube ride (London's "Underground" subway) to the London Eye and experienced the 4D London Eye experience. The 30-minute London Eye "flight" was to a height of 443 feet and we were amazed at the breathtaking London landscape. It was a great way to begin our trip!

We stayed at the beautiful Millennium Gloucester Hotel located in Kensington, London for our entire 8-day trip. Our



Group at London Eye



Aerial view from London Eye



Group at Buckingham Palace



Tour Manager Chris Relton

fabulous tour manager, Chris Relton was an excellent and knowledgeable guide educating us on all London and England has to offer.

On Day 2 of our trip, we took a morning guided sightseeing tour of London and had the opportunity to watch the historic changing of the guard at Buckingham Palace. After lunch, we had the opportunity to stroll the streets in Kensington and visit the museums in the area. Our afternoon was a tour of Kensington Palace where we had the chance to chat with various characters from history that lived in the palace, specifically King George II was anxious to talk to visitors. The beautiful Kensington Palace gardens and Sunken Garden were next on the agenda. We walked in the footsteps of royalty in the gardens and enjoyed afternoon tea. To close out the day, we enjoyed a delicious dinner at a restaurant near our hotel.

We kicked off our Day 3 with a train ride to the historic, walled city of York. Upon arrival in York we visited York Minster, the grand English Gothic cathedral, which is among the oldest and largest of its kind in Europe. Afterwards, we enjoyed a traditional English lunch at one of the oldest (established in 1644) York restaurants/inns, Ye Olde Starre Inne, and then, had a guided walking tour to uncover all of York's quaint cobbled streets. Our tour included visiting the Shambles, a street with overhanging timber-framed buildings, with some dating back to as far as the 14th century. We had the opportunity to visit the famed York wall and Clifford's Tower, part of the medieval Norman castle built by William the conqueror in 1068.

Day 4 of our trip included a guided tour of the Houses of Parliament, also

called the Palace of Westminster. It serves as the meeting place of the House of Commons and the House of Lords and was an educational glimpse into the bicameral legislative body of the UK and its history. We also made a visit to St. Paul's Cathedral, which is famed for its dome. Although, St. Paul's Cathedral has been built and rebuilt, there has been a church on this same site since 604 A.D. Afterwards, we took a double decker bus to Covent Garden for a lovely dinner at a nearby restaurant.

Our Day 5 London experience began with taking a Coach bus to Stonehenge and Salisbury. We learned about the mysterious circle of Stonehenge and its origins dating back 5,000 years ago. We were able to spend time walking around the Stone Circle taking in the engineering masterpiece. It was an awe-inspiring experience to view the unique prehistoric monument and remarkable ancient landscape. Next, we visited Salisbury Cathedral, which is home to one of the best-preserved copies of the original Magna Carta. The Salisbury copy is one of just four 1215 A.D. originals in the world! Afterwards, we visited the quaint streets of Salisbury and had lunch. Upon arriving back at London, we spent the evening at London County Hall enjoying a magnificent performance of an Agatha Christie play "Witness for the Prosecution".

On Day 6 of our trip, we made a morning visit to Westminster Abbey, a large Gothic abbey church near the Palace of Westminster. It is the traditional place of England's coronations and is also the burial place of many kings and queens of England dating back to the medieval times. We were also able to tour the Supreme Court of England. The supreme court was in recess; however, we were allowed to sit in the justices' chairs. After a quick lunch, some of us visited the Churchill War Rooms, where we discovered the life and legacy of Winston Churchill and how we ran World War II from a bunker hidden beneath the streets of Westminster. That evening, we had a lovely group farewell dinner.

Our final tour day comprised a visit to the Tower of London where we witnessed the opening ceremony and Beefeater guards. While at the Tower, we viewed



Kensington Palace



Kensington Interior



Kensington Garden



York Minster



York Minster Interior



the crown jewels and learned about the 1,000 years of Royal and English history at this iconic castle. After, some of us visited the defining London landmark, Tower Bridge. That afternoon we took a tea masterclass while enjoying English tea and cakes. That evening, we gathered to give a thank you gift to our tour manager, Chris Relton, who made our trip very memorable and educational.

The morning of Day 8, we boarded a bus for our return flight to the U.S. Farewell, London, England! It was a tremendous experience!

For more photos of our trip, you can visit our Facebook page titled Paralegal Division Travels to Europe.

A thank you goes out to Rhonda Brashears for coordinating this trip. Additionally, a thank you goes out to

our tour manager, Chris Relton, who is also a Solicitor, and provided us with 3.5 hours of CLE on the *Laws, Courts, and Parliament of the UK*.

We hope you will join us for a trip in the future. The 2020 Europe Trip is to Bratislava and Budapest. More details to follow very soon.



Clifford's Tower



Parliament



Inside Parliament



St. Paul's Cathedral



Stonehenge



Group at Stonehenge



Group at Salisbury Cathedral



Westminster Abbey



London Tower opening ceremony



White Castle at London Tower



Group at Tower Bridge



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- (1) completing twelve hours of accredited CLE in the previous OR current calendar year which must include two hours of ethics,
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- (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 of ethics may be earned through self-study.

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TEXAS BAR COLLEGE

PROFESSIONALISM THROUGH EDUCATION

Welcome to the Paralegal Division FAQs!

These are the most frequently asked questions about PD membership and membership renewal. These are linked to the Paralegal Division website and can be found there directly, together with other commonly asked questions.

How do I update my contact information on the Paralegal Division's website directory?

How do I add specialty areas of law to my membership record?

How do I join the Paralegal Division of the State Bar of Texas?

I have recently changed my last name. How do I make that change to my membership record?

I recently received the Paralegal Division membership acceptance letter but need my membership number in order to gain access to the Division's Members-Only area on the website. Can you please forward my membership number to me?

I recently updated my membership information via the State Bar of Texas website. Why is it not updated on the Directory on the Paralegal Division's website?

I missed the July 31st deadline to renew.

How do I maintain my membership in the Paralegal Division?

How do I find my membership number?

I would like to submit an application for membership to the Paralegal Division, and I am in the process of going through the appropriate amount of CLE. Can I take the full 6 hours of CLE online?

I am a new member of the Paralegal Division and I cannot log into the Members Only area. Can you tell me why?

I have lost my membership card. How do I order another one?

When do I renew my membership in the Paralegal Division?

I have completed a full year working as a paralegal. The one year experience has been split between two employers. What

should I list on the Active Membership Application to show the one year of paralegal experience?

Can I change my current status to different status before the renewal process?

How do I change my Emeritus or Student membership to a different membership status?

Can I change my membership status from a Student member to an Active or Associate Member before the renewal process?

When will I receive my new Active Member Certificate?

How do I replace my Active Member Certificate?

I renewed my Membership but I did not receive a new Membership Bar Card. Why?

See these and other FAQs on the PD website home page under "FAQs" tab or click <https://txpd.org/faqs.asp?p=Membership#>.



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Paralegal Division Standing Committees

Each year the Paralegal Division Board of Directors appoints members to serve on the various committees of the Paralegal Division. The Paralegal Division sends a call to each member and asks for his or her assistance. The list below details the Standing Committees of the Paralegal Division. If you are interested in serving on a committee, please contact your District Director by going to <https://txpd.org/contacts.asp#contact260> or you may go to the “Members-Only” are of the PD website and choose “Volunteer.”

Continuing Education Committee. This committee shall be composed of at least one eligible (Active) member from each District who shall chair a subcommittee of three to five eligible members of the Division in the respective District. This committee shall be responsible for planning and presenting at least three hours of continuing legal education in each district per year. The committee shall also implement and manage an online

continuing legal education program. The Continuing Education Committee shall also implement and monitor compliance with the six-hour mandatory continuing legal education, including one hour of ethics, requirement in conjunction with the Membership Committee.

Elections. This committee shall be composed of at least one active member from each District and shall fulfill the responsibilities set forth in these Standing Rules and the Bylaws. This committee will be concerned with the process of elections for Directors and with the process of balloting on proposed amendments to the Bylaws and shall assure compliance with the guidelines for each such process.

Membership. This committee shall be composed of at least one active member from each District and shall fulfill the responsibilities set forth in Section II of these Standing Rules. This committee will be concerned with qualifications for membership and the criteria to be used

in determining eligibility, and shall promote membership and growth within the Division.

Professional Development. This committee will assist in various projects for enhancing the professional development of Paralegals. This committee shall also monitor any bills introduced in the Texas legislature which would affect the paralegal profession and members of the Division, and shall be prepared to inform the general membership of the pros and cons of any such bills. This committee shall also monitor nationally the following: (a) articles published regarding the activities and profession of Paralegals; (b) legislative action regarding the activities and profession of Paralegals; and (c) court cases relative to the ethical considerations in the use of Paralegals and any other relevant information regarding the activities and profession of Paralegals. This committee shall recommend to the Board any legislation which it deems to be in the best interest of the general membership of the Division; and it shall recommend to the Board the dissemination to the general membership of the Division of any national articles, legislative action or court cases which it deems appropriate.

Public Relations. This committee shall be composed of at least one eligible (Active) member from each District. This committee shall study and develop various means to better inform the legal profession and the general public about the Paralegal Division, Paralegal profession, and shall nurture positive relationships with local and national associations of paralegals and other associations throughout the country.

Publications. This committee shall be responsible for reviewing and submitting various items for publication in the *Texas Paralegal Journal*. It shall also study and recommend to the Board any other publications which will be beneficial to members of the Division and shall also be responsible for soliciting articles from as many members as possible.

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Click [here](#) for more information. To register click [here](#).



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

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



***Be a step above the rest –
Join the Paralegal Division
of the State Bar of Texas***

PD provides many benefits for career growth:

- Networking with paralegals across the state
- Powerful CLE opportunities such as Texas Advanced Paralegal Seminar (TAPS)
- Professional Development
- Professional magazine with substantive articles and updates from across the nation

THINK ABOUT IT.....

an organization designed just for YOU! ENHANCE YOUR CAREER by becoming a part of PD today.

Go to www.txpd.org and see for yourself or contact the PD Coordinator via email at pd@txpd.org or call (806) 443-2209



PARALEGALS GO TO Bratislava and Budapest

April 17 – April 25, 2020
(Eight Days and Seven Nights)

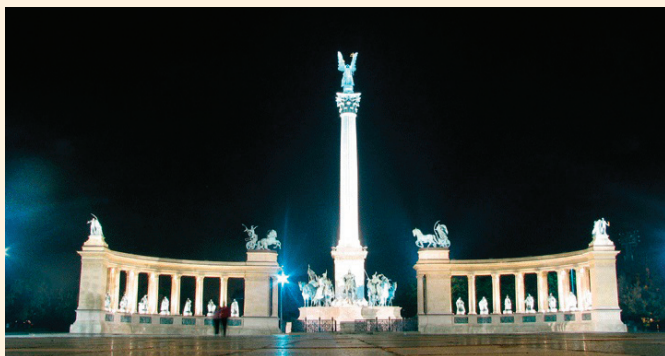
FRI, April 17, 2020 -- Depart from the USA to Vienna.

SAT, April 18, 2020 (Bratislava) – Arrive in Vienna, meet your expert Tour Manager and transfer to the historic and lovely Bratislava, the capital city of Slovakia, where you'll check-in to your hotel and start exploring. (D)

SUN, April 19, 2020 (Bratislava) – Enjoy a walking tour with your Tour Manager this morning exploring the pedestrian-friendly medieval and Gothic old town nestled along the river. You'll have the balance of the day to continue exploring on your own! (B)

MON, April 20, 2020 (Bratislava) – Today you'll enjoy an excursion to Eisenstadt, Austria, capital of Burgenland. Your guide will take you on a walking tour which includes entrance to the grand Esterhazy Palace where you'll discover its treasures and beautiful gardens. Lunch will be included today, and then you'll enjoy some free time before returning to Bratislava. (B,L)

TUE, April 21, 2020 (Budapest) – Depart Slovakia this morning and continue your journey to Hungary. Today's destination is Budapest, also known as the Pearl of the Danube. This evening enjoy a cruise on the Danube. (B,D)

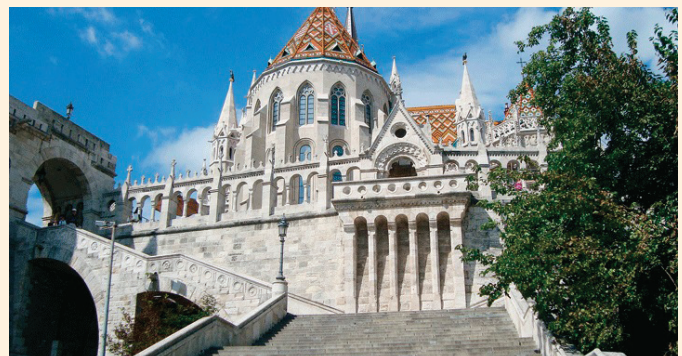


WED, April 22, 2020 (Budapest) – Meet your local guide for a sightseeing tour of Budapest where you'll learn about the amazing 1,000-year history of this city, split in half by the Danube River—the Buda district on one side and the Pest district on the other (hence the city's name!). See Heroes' Square, St. Stephen's Basilica, and the spectacular Hungarian Parliament building, then cross the famous Chain Bridge to take in wonderful views from the neo-Roman Fisherman's Bastion, and enjoy entrance to Matthias Church. The afternoon is free to perhaps visit the Great Market Hall or reflect on the atrocities of the fascist and communist regimes at the powerful House of Terror museum. (B)

THU, April 23, 2020 (Budapest) – This morning enjoy an excursion to Gödöllo Royal Palace, an imperial and royal palace completed in the 1760s and known for being a favorite of Queen Elisabeth of Hungary (or more commonly known as Sissi). Farewell dinner this evening. (B,D)

FRI, April 24, 2020 (Budapest) – Today you'll enjoy an excursion outside of the capital where you'll experience small-town Hungary with visits to a couple of picturesque towns that may include Eger, Esztergom, Szentendre, and/or Szeged. Be on the lookout for castles, basilicas and lovely Baroque buildings. (B)

SAT, April 25, 2020 - Depart for the USA. (B)



FEE WITH AIR INCLUDED:

Register by August 1, 2019 and receive a \$100 Discount.
Fee is based on registration by December 1, 2019.

FEE WITH AIR INCLUDED: **Register by August 1, 2019 and receive a \$100 Discount.**
Fee is based on registration by December 1, 2019.

Fees: Departing DFW – \$4,829; Houston \$4,889; Austin/San Antonio - \$4,909; Amarillo/Midland - \$4,969 (includes program fee). **Note:** Registrations after August 1 may include additional fuel surcharges that are finalized 45 days prior to departure; an invoice will be sent at that time if there are any increases. ***Other departure cities available upon request. Fees based on 20 persons and includes airfare, hotel, transportation, tours, and meals as indicated above.***

Additional/Optional fees: Single room supplement: \$665; Ultimate Protection Plan: \$270; Comprehensive Protection Plan: \$225; If the Ultimate or Comprehensive Plan is purchased there is a surcharge for guests ages 66+: \$100

LAND ONLY FEE: (*if you wish to make your own air travel arrangements*): \$3,409

PAYMENT SCHEDULE: **Deadline for registration is December 1, 2019;** Initial non-refundable deposit is \$200; second payment of \$1,000 is due October 1, 2019; third payment of \$1,000 is due on November 1, 2019, with balance due on December 1, 2019. **Non-payment of required on-time monthly payments will result in trip cancellation.**

MAKE IT EASY ON YOURSELF! SIGN UP FOR AUTO PAYMENTS: Automatic Payments plan available. Automatic Payments makes planning your trip budget easy because your payments are spread out evenly, giving you more time to pay. You choose a payment frequency (every 2 weeks, every 4 weeks, monthly, or quarterly) and your payments are automatically deducted from your checking or savings account. **Travelers who use autopay will be given a \$50 discount.** Automatic Payments are available for all registered participants in "My Account:" at www.acis.com/accounts.

So, if you register by August 1 and use auto-pay you can save \$150.00!

EXTENSION: To extend stay at the end of the trip, an Alternate Request Form must be completed (found at https://www.acis.com/cmsfiles/file/Alt_Return_Form.pdf) and returned to ACIS at least 90 days prior to your trip's departure. There will be an additional fee of \$175 for this extension, plus any additional airline ticket costs.

REGISTER at <http://www.acis.com/register> choose **Participant** from the drop-down menu and sign in using: **Group Leader ID: 46775- Group Leader's Last Name: Brashears** - Click on the appropriate circle for your departure city for the **"Bratislava/Budapest Trip"** trip and fill in your information.





MENTOR PROGRAM

BE A MENTOR | HAVE A MENTOR

Protégés:

- Receive guidance/direction/support on topics such as ethics, career advancement, & professionalism.
- Access to valuable networking opportunities with other paralegals and the legal community through your mentors and others at state-wide and district PD events.
- Opportunities to learn more about the PD and PD activities & opportunities to get more involved.

Mentors:

- Opportunity to share your guidance/direction/support on topics such as ethics, career advancement, & professionalism.
- Encourage and promote the Division, and opportunities to participate in the Division.
- Invite Protégés to attend Division functions, and introduce Protégés to Division leadership, as well as some of the members.

*Voting, active members in good standing, with at least seven (7) years of experience as a paralegal, are qualified to serve as Mentors. Mentors must complete the requisite application acknowledging Mentor has read and agrees to follow the Mentor Program Guidelines.

SIGN UP TODAY

For more information contact:
mentorprogram@txpd.org



100 PD Club For 2018–2019



Thank you to the following firms for having 100% Paralegal Division enrollment:

Bohreer & Zucker, LLP (Houston)
Butler & Harris (Houston)
Jones & Jones (Longview)
Law Offices of Jason Smith (Fort Worth)
Law Offices of Terri Moore and Michael Ware (Fort Worth)
Lynch, Chappell & Alsup, PC (Midland)

Mann Tindel Thompson (Henderson)
Texas Legislative Council, Legal Division (Austin)
The Brender Law Firm (Fort Worth)
The Dauphinot Law Firm (Arlington)
The Woodmont Company (Fort Worth)
Weinman & Associates (Austin)

Law firms and legal departments with 100% of their paralegals enrolled as PD members for 2017–2018 qualify for the “100 PD Club” to be featured in this edition. For a “100 PD Club” form for 2019–2020, please see the notice in Winter/Spring TPJ or e-mail TPJ Editor at tpj@txpd.org, and type “100 PD Club” in the subject line after March 1st.

In Memoriam...



Nan Andrea Gibson, 65, of Orange, Texas, passed away on March 2, 2019, in Port Arthur, Texas.

Born in Orange, Texas, on December 20, 1953, she was the daughter of William Andrew Gibson and Vivian Winona (Arledge) Gibson. Nan worked

as a paralegal for Jenkins and Kamin Family Law Firm in Houston for 23 years. She enjoyed visiting the casino and gambling. Nan was a very giving person and she loved her family. She will be missed by all who knew and loved her.

She was preceded in death by her parents, William and Winona Gibson.

She is survived by her siblings, Winona Stark and husband Bill of Orange, Lynn Wright of Houston, Lisa Richter of Galveston; and her numerous nieces, nephews, great-nieces, and great-nephews.

Nan was loved by so many.



Carol Pelzel, 57, of Pilot Point, Texas, passed away on January 10, 2019. Carol was the paralegal for Judge Robison prior to him taking the bench and District Court Administrator of 393rd District Court.

Carol's sense of humor and love for life was infectious. She loved to laugh and loved to give her patented wide eye stare which made you laugh all the more. Carol was excellent at her job. She loved working with her judge, coworkers and sometimes the attorneys. At this point, she would do give her wide eye stare. Most of all, Carol loved her husband Randy and her family. She was so proud of her three children and all they accomplished. She especially loved to tell stories about her grand babies. She is sincerely missed.

Carol is survived by her husband Randy of Pilot Point, TX; mother, Carolyn of Sanger, TX; son, Joshua and wife Jessica Pelzel of Ormond Beach, FL; two daughters, Lauren and husband Mario Castillo, Jr. of Celina, TX and Sarah and husband Thomas Bautista of Jourdanton, TX; four grandchildren, Ava and Chase Bautista and Myles and Maddox Castillo.

Carol was such an amazing lady.

To submit a memorial for a PD member, e-mail TPJ Editor at tpj@txpd.org, and indicate “Memorials Form” in the subject line.