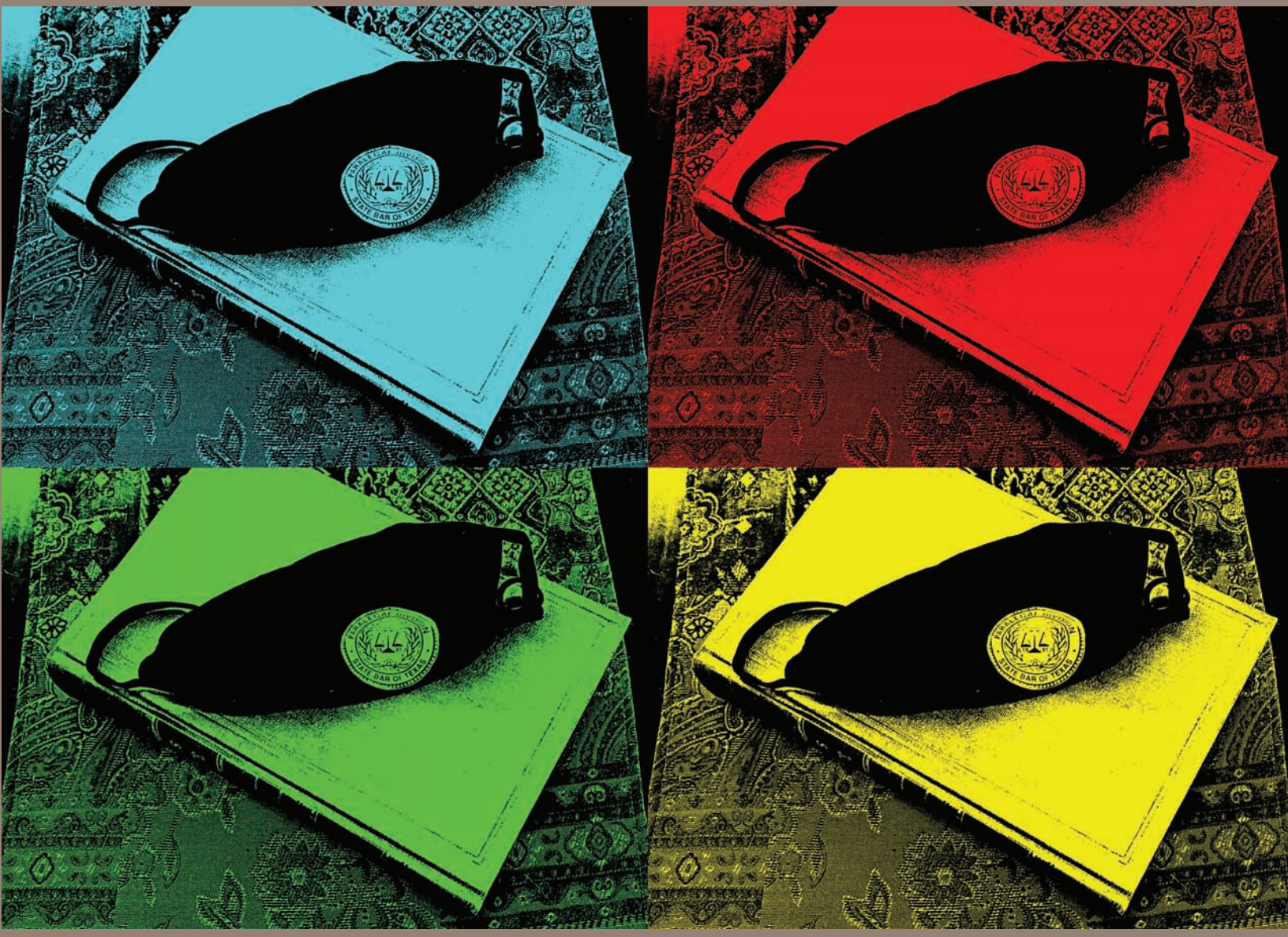
SPRING 2021 VOL. 26 NO.4

TPJ

Texas Paralegal Journal



Many Facets of a Paralegal

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- Linda M. W. — Houston, TX

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PRESIDENT'S *Message*

Edna W. Garza-Guerra, TBLS-BCP

Welcome Spring! In March, we celebrate the beginning of spring – the rebirth of life as we begin to see plants, flowers, shrubs, trees and grass in full bloom. March is also "Women's History Month." As we celebrate "Women's History Month," let's reflect on what some famous women did in the past that helped us get to where we are today. They include: **Hannah Arendt** *(author, educator and political philosopher);* **Clara Barton** *(dedicated her life to others in time of need during military emergencies);* **Mary McLeod Bethune** *(world-renowned educator, civil rights champion, leader of women and presidential advisor)*; **Frances Benjamin Johnston** (*first American woman to achieve prominence as a photographer);* **Margaret Armstrong** *(first American graphic artist and author)* just to mention a few. These women served as trailblazers in their time, who dared to stand up to make a difference which resulted in many of the privileges that women get to enjoy today. Obviously, the women listed above were strong and stood firm on their principles, convictions, and beliefs even when others didn't necessarily believe in them. And that is what sets these women apart and made them history makers.

Most of us have had at least one role model that has made a significant difference in our lives, you know, that one individual *(man or woman)* who made an incredible impact that helped shape and mold us into the women we are today. I've been fortunate to have had three (3) incredible role models in the past: my Mom (Alicia), my sister (Olga) and my Paralegal Instructor/attorney, (Mrs. Freeman). Although my Mom and Mrs. Freeman are no longer with me, I have my amazing sister to look to for guidance and support. Her advice is solid, valuable and always in my best interest. I listen to my sister's advice without a doubt or hesitation. So if you don't already have a role model, find one! Is there someone in your life that impresses you, guides you or offers advice especially when you seem down and out? Instead of thinking that person may only be nagging you, listen to him or her. That person may very well become the rock that you need to lean on in order to continue to strive and grow in whatever you are trying to accomplish. That person will also encourage and motivate you as often as necessary. The end result: success *(i.e. accomplished goals and dreams!)*.

To everyone reading this article, you too can make a difference in today's world.

(Continued on p. 3)

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Texas Paralegal Journal

TPJ

Focus on. . .

Hot Cites

Columns

Et Al.

EDITOR'S *Note*

Where were you on February 16th when Winter Storm Uri was making its mark all across our Great State? My husband, our three dogs, and I were home without power for three days. (No fireplace, I opted not to have one when we built the house – who knew?) Fortunately, we did have running water, and we were hoping our water heater would survive the inside temperature of about 38°. My elderly parents (who are in the city and were unable to be moved for health reasons) were without power even longer. There are more tragic stories, indeed. It was a disaster upon disaster across Texas. It was uplifting to see so many people reaching out to help complete strangers. Across social media, offered rides to transport people and animals (including farm animals) to shelters or provide food and water. No judgment and asking nothing in return. A community - this is how I envision the Paralegal Division. The **E-Group** alone is a perfect example. The Paralegal Division's E-Group is a phenomenal resource where paralegals reach out about a need, request, information, and members – on the same side of the docket or not – from miles and miles away across the state provide helpful information without any expectations.

Another example is the **Ambassador Program**. Paralegal Division Ambassadors are past presidents who will present a CLE for free to your local association. We embrace our paralegal community. Be sure to enjoy your member benefits and help give back by volunteering for your district in some capacity. Go to www.txpd.org and log in; there is an "Other Links" section that says "Volunteer" and lists all of the current items. Feel free to e-mail me at tpj@txpd.org, too, if you have any questions!

STORM URI RESOURCES. Whether it is about replacing lost documents, insurance help, renter's rights, or a lawyer referral, here is the link to the State Bar's Disaster Relief Resources page that may be of some assistance if you have suffered damage from Winter Storm Uri: https://www.texasbar.com/Content/NavigationMenu/ForThePublic/DisasterReliefResources1/default.htm

SEE YOU SOON! The Supreme Court's 36th Emergency Order! The Texas Supreme Court issued its 36th Emergency Order of the COVID-19 pandemic removing requirements so only certain proceedings will be remote. https://www.txcourts.gov/media/1451833/219026.pdf With that being said, TAPS is going to be in-person this September. We hope you can join us!

--Megan Goor, TBLS-BCP, Editor

Dare to dream, dare are to set the bar high and dare to stand up for what you believe in, even when others don't. In closing, one of my favorite quotes is from John F. Kennedy: "*One person can make a difference and everyone should try.*" You too have the power to make a difference!

Edna W. Garza-Guerra, TBLS-BCP
President

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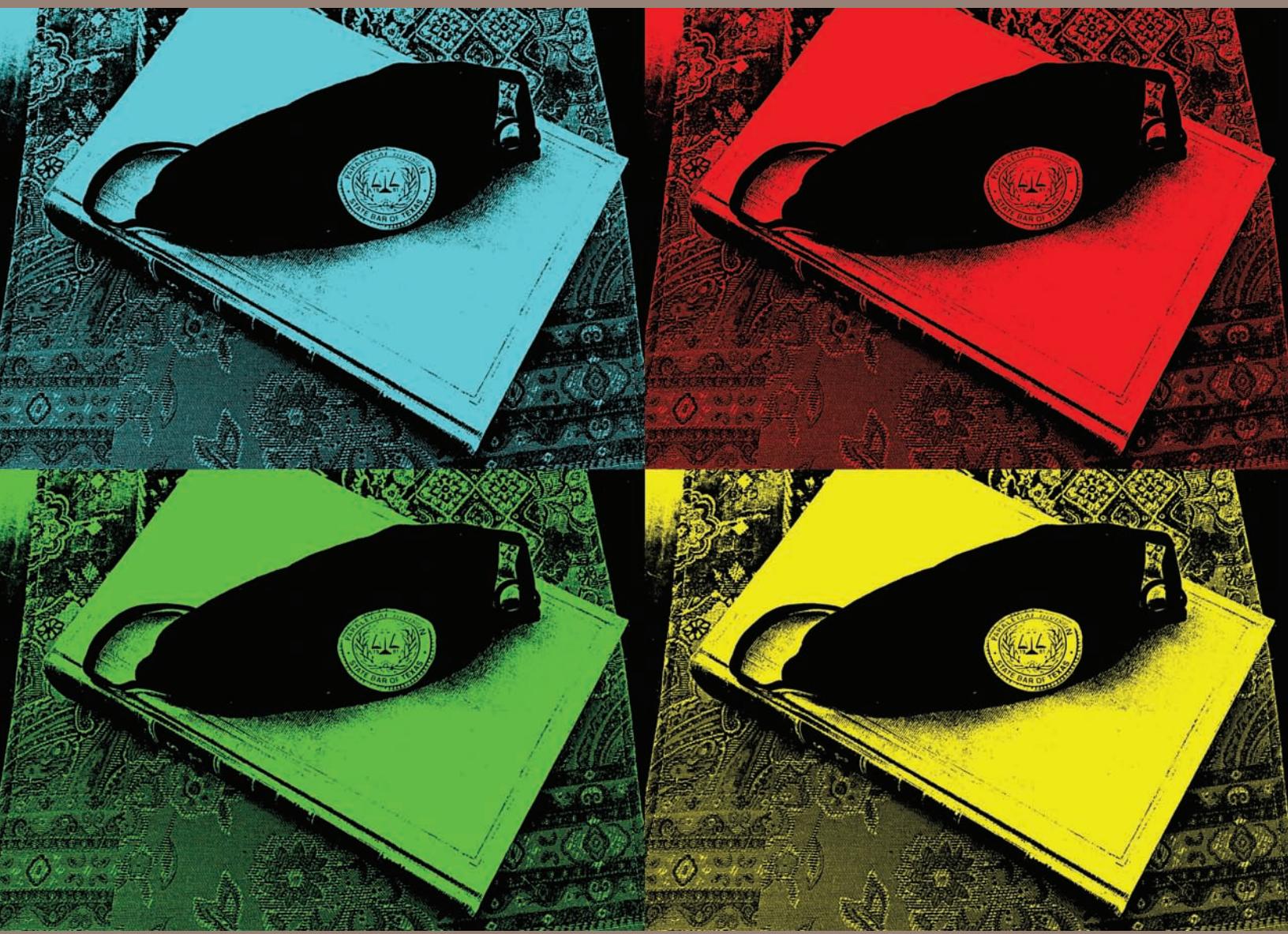
STATE BAR OF TEXAS

Focus on . . .

Stand by Me: Effective (and Ethical) Use of Paralegals

By
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Rivers McNamara, PLLC

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I. INTRODUCTION

With apologies to Ben E. King, who wrote the iconic song "Stand by Me," here's one attorney's ode to all of the phenomenal family law paralegals who stand by us and enhance our service to our clients in so many ways, especially in this era of virtual hearings and trials:

When the trial is nigh
And the stakes are high
And the Zoom screen is the only light we'll see
No I won't be afraid (of a missing exhibit)
Oh, I won't be afraid (of a missing witness)
Because the paralegal has been standing, standing by me
(maybe virtually, but standing by nevertheless).

In this paper, we will delve into paralegal standards, best practices, and ever-important ethics applying to paralegals and attorneys. And a special word to attorneys: Please thank your paralegals early and often. They are vital to the hard work we do for families.

II. PARALEGAL STANDARDS IN TEXAS

A. Definition of "Paralegal"

In 2005, the State Bar of Texas Board of Directors, and the Paralegal Division of the State Bar of Texas, adopted the following definition of "Paralegal":

> *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.*

By comparison, the current American Bar Association definition of "Paralegal," adopted in February 2020, is as follows:

> *A paralegal is a person, qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible.*

It is important to note that the 2020 version of the ABA definition removes the term "legal assistant" to reflect the terminology that more accurately represents the type of substantive work that paralegals perform. Therefore, in a distinct change, "legal assistant" and "paralegal" are no longer synonymous under the revised American Bar Association definition.

B. State Bar of Texas Paralegal Standards

In 2006, the State Bar of Texas Board of Directors approved

Canon 9. A paralegal shall maintain a high degree of competency to better assist the legal profession in fulfilling its duty to provide quality legal services to the public.—Code of Ethics and Professional Responsibility of the Paralegal Division of the State Bar of Texas.

amending the definition of "Paralegal" by including the following "Standards," which are intended to assist the public in obtaining quality legal services, assist attorneys in their utilization of paralegals, and assist judges in determining whether paralegal work is a reimbursable cost when granting attorney fees:

A. Support for Education, Training, and Work Experience:

1. Attorneys are encouraged to promote:

a. paralegal attendance at continuing legal education programs;
b. paralegal board certification through the Texas Board of Legal Specialization (TBLS);
c. certification through a national paralegal organization such as the National Association of Legal Assistants (NALA) or the National Federation of Paralegal Associations (NFPA); and
d. membership in the Paralegal Division of the State Bar and/or local paralegal organizations.

2. In hiring paralegals and determining whether they possess the requisite education, attorneys are encouraged to consider the following:

a. A specialty certification conferred by TBLS; or
b. A CLA/CP certification conferred by NALA.; or
c. A PACE certification conferred by NFPA; or
d. A bachelor's or higher degree in any field together with a minimum of one (1) year of employment experience performing substantive legal work under the direct supervision of a duly licensed attorney AND completion of 15 hours of Continuing Legal Education within that year; or
e. A certificate of completion from an ABA-approved program of education and training for paralegals; or
f. A certificate of completion from a paralegal program administered by any college or university accredited or approved by the Texas Higher Education Coordinating Board or its equivalent in another state.

3. Although it is desirable that an employer hire a paralegal who has received legal instruction from a formal education program, the State Bar recognizes that some paralegals are nevertheless qualified if they received their training through previous work experience. In the event an applicant does not meet the educational criteria, it is suggested that only those applicants who have obtained a minimum of four (4) years previous work experience in performing substantive legal work, as that term is defined below, be considered a paralegal.

B. Delegation 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).

C. Consideration of Ethical Obligations:

1. Attorney. The employing attorney has the responsibility for ensuring that the conduct of the paralegal performing the services is compatible with the professional obligations of the attorney. It also remains the obligation of the employing or supervising attorney to fully inform a client as to whether a paralegal will work on the legal matter, what the paralegal's fee will be, and whether the client will be billed for any non-substantive work performed by the paralegal.

2. Paralegal. A paralegal is prohibited from engaging in the practice of law, providing legal advice, signing pleadings, negotiating settlement agreements, soliciting legal business on behalf of an attorney, setting a legal fee, accepting a case, or advertising or contracting with members of the general public for the performance of legal functions.

III. ROLE OF THE PARALEGAL

A. What a Paralegal Cannot Do

A paralegal cannot practice law or set fees, including:

- representing a client in court;
- signing pleadings;
- giving legal advice;
- accepting clients, or
- setting or quoting fees independently of an attorney.

NO Signing of Pleadings or Discovery

Only an attorney (or a party if not represented by an attorney) may sign a pleading. The only person who may "sign by permission" for a licensed attorney is another licensed attorney. *See* Tex. R. Civ.

P. 57. This is because the signature of an attorney (or party) constitutes a certificate that the attorney or party has read the pleading, and that to the best of his or her knowledge, information and belief formed after reasonable inquiry that the instrument is not groundless and brought in bad faith or groundless and not brought for the purpose of harassment. *See* Tex. R. Civ. P. 13.

Similarly, only an attorney may sign a certificate of service because it is prima facie evidence of the fact of service. *See* Tex. R. Civ. P. 21a. The only person who may "sign by permission" for a licensed attorney is **another licensed attorney**.

B. What A Paralegal Can Do: Best Practices

Typical duties of a paralegal include, but are not limited to, the following:

- Conducting client interviews and maintain general contact with the client.
- Locating and interviewing witnesses.
- Conducting investigations, statistical, and documentary research.
- Conducting legal research.
- Drafting legal documents, correspondence and pleadings.
- Summarizing depositions, interrogatories and testimony.
- Attending depositions, hearings, and trials with the attorney.
- Authoring and signing correspondence, provided the paralegal status is clearly indicated and the correspondence does not contain independent legal opinions or legal advice.

Within the constraints set forth above, the services performed by a paralegal are limited only by training, experience, and the instructions of the supervising attorney. Small firms may require that paralegals perform all of their own clerical duties, as well as the billable ones. Many paralegals find themselves wearing many other hats, such as: Secretary, Receptionist, Runner, Billing, Accounts Payable/ Receivable, Supply Stocker, etc. Paralegals in larger firms may have the luxury of secretarial support, law office administrators, and other support staff to handle the legal filings, ordering supplies, etc. Of course, this frees the paralegal to perform more client-related, and billable, services.

A paralegal may sign correspondence, including e-mail correspondence, so long as legal advice is not given and the paralegal's name, title, and either the firm name or the name of the supervising attorney is provided. A paralegal may also sign correspondence by an attorney by permission so long as the paralegal's title is clearly indicated and the letter does not contain legal advice or agreements. If the letter contains legal advice or agreements, the attorney should sign or have another attorney sign by permission.

Paralegals must always identify themselves by name and title on any business correspondence they send. This includes email as well as regular letters or documents. It matters not to whom the letter is addressed or by whom it was requested: if it is business correspondence or documentation on which the paralegal's name appears, the paralegal's title must also be included. This also applies to business cards and letterhead on which the paralegal's name appears.

1. Client Communications

The paralegal is the main gateway for continued communication with the client. But the communication does not stop there. The paralegal should ensure the attorney is informed of all significant contacts with the client, as well as refer all inquiries for advice. The attorney does not have to speak with the client, but the paralegal should always indicate to the client that when a particular question seeks legal advice and that the client either speak directly to the attorney or the paralegal will follow up with the attorney and report back. And follow-up calls should include a reference that the paralegal did speak with the attorney and the attorney said 'x' or that it needs to be handled in a certain manner.

While the paralegal's contact with the client is an invaluable assistance to most attorneys, it can never supplant the attorney's main duty to maintain a direct relationship to the client. The paralegal should always, therefore, provide the attorney with a brief synopsis of the substance of each conversation. This enables the attorney to keep abreast of new facts or developments in the case while saving them the embarrassment of being ignorant to relevant facts when they actually do talk to the client. A brief "memo to the file" is a good way to save these notes for retrieval and reference. The best practice is to set the information down on paper, an electronic notes file, or in an email soon after the conversation so details are not lost as time passes.

Recall that rarely in law does an emergency arise that requires immediate action. Calls and e-mails do not have to be responded to immediately. But don't forget that lack of communication with the client is the largest source of grievances. If the client calls or e-mails, the better course of conduct may be quickly to confirm with the client that you are aware of their question and you will get back to them by a date and time certain. This allows the team of attorney and paralegal to consider the query thoughtfully and provide an appropriate, timely response. However, be wary of responding with an email or a call after regular business hours. Clients may come to expect a response at 9 p.m. or on Saturday afternoon.

2. Drafting Pleadings, Motions, Decrees, Orders, and Closing

Documents

In most cases, it is simply not economically efficient for the lawyer to draft a fifty-page decree, much of which consists of form language. By using the paralegal's skill and experience in drafting various pleadings, motions, decrees, and orders, the lawyer can spend time on more substantive issues while lowering costs to the client. The paralegal may gather all of the preliminary information needed to assist the lawyer in determining what issues should be pled, which methods of discovery are appropriate and should be implemented. If the paralegal is present in the courtroom when the Judge renders his/her decision, then are two sets of notes from which to draft, and the lawyer does not have to come back from court and repeat the outcome or "translate" the lawyer's notes.

The paralegal can also prepare drafts of ancillary closing documents, such as real estate transfer deeds and other transfer documents. When closing the file, the paralegal can draft the closing letter to include important dates and deadlines, such as:

- Date(s) any settlement payments are due.
- Deadlines and obligations related to the non-employee spouse's health insurance coverage under COBRA.
- Deadlines and obligations for changing life insurance beneficiary designations and providing proof of coverage.
- Notice dates required by the possession order and any other significant dates related to possession of the children. Obligation and deadlines for notifying the former spouse, the court, and the child support collection agency of any changes of employer, employer's address, and client's address.

3. File Organization

The paralegal should have complete control over file organization. Exhibits, correspondence, document production, and anything else that finds its way into a client's file should ultimately pass through the paralegal's hands. This is true whether the file is paper or paperless. This ensures that at least one person in the office can locate every item in a given file. To further ensure that the file is well-organized and documents do not "disappear," the lawyer should never touch anything in the file without the paralegal's permission. It may be a good idea to make "working copies" for the attorneys and allow the original documents to stay in the file.

4. Discovery

Discovery is often the most time-consuming aspect of litigation. The paralegal can reduce costs and minimize attorney time by handling discovery drafting and information gathering under the attorney's supervision. After receiving basic instructions from the attorney, an experienced paralegal can draft every type of discovery request. This reduces the attorney's time spent on preparing discovery requests to a simple review of previously drafted documents.

As to organizing and reviewing responses to discovery, the paralegal is again the ideal choice. As noted above, the paralegal often has a superior knowledge of the facts in the case and the location of documents in the case file. With this advantage, an experienced paralegal can organize voluminous amounts of documents in a fraction of the time it would take the attorney. Once organized and indexed, documents and other discovery expenses can be reviewed by the attorney. In fact, if the attorney points out a specific focus or issue to the paralegal, precious time can be saved because the paralegal can guide the attorney to relevant information or documents.

Having the client involved in the process is an absolute necessity. The attorneys can answer some of the discovery we know are "form answers" but as to the actual information and documents, the client is the only one that can provide this information. Let them know from the beginning that this is their responsibility. Tell them that they will be working with the paralegal to complete this task and the importance of providing complete information in a timely manner. Also, make sure the client is aware of the consequences of not fulling responding or not responding at all, such as Motions to Compel and for Sanctions.

5. Mediation, Hearing, and Trial Preparation

During the pendency of the case, a paralegal is indispensable to the lawyer's mediation, hearing and trial preparation. From the file organization duties discussed above to preparation and organization of the trial notebook, an involved paralegal can streamline and focus trial preparation, thereby saving the client money and allowing for more effective use of the lawyer's time.

If the paralegal is actively involved with a case from the beginning, the paralegal may have more knowledge of the facts than the lawyer. This is especially true if the paralegal is present during the initial client interview, reads and summarizes deposition transcripts, and interviews witnesses. The paralegal, familiar with the facts, can assist in drafting outlines for the attorney to use depositions, hearings, and trials.

The paralegal's responsibilities normally also extend to the preparation of the trial or mediation notebook (whether paper or electronic). Although the lawyer should provide organizational input, the paralegal is usually the person who knows where everything is. By delegating the notebook preparation duties to the paralegal, the lawyer can again save the client money and focus his or her time on other matters.

C. Support Help for the Paralegal

There are businesses that offer services to assist your paralegal with research, drafting, and discovery. To locate one in your area, ask other attorneys that have used contracted services or search for "paralegal services *your city*." Additionally, the financial expert that you are using may provide document management services and assist with preparing Inventory & Appraisements, Mediation Spreadsheets, and Responses to Requests for Production.

Outside Document Management Services should offer the following:

1. Consultation and evaluation: Assessment of your organizational and document requirements. This is the most crucial element, as the ultimate success of a using an outside service or contractor is dependent upon defining each of your case's individual requirements. You, your paralegal, and the outside provider must have a relationship built on trust and dependability, just like the relationship between you and your paralegal.
2. Document organization and inventory: Firms offer the ability to use key words in a searchable database, as well as uniquely identifying all documents and ultimately bates stamping documents that are produced.
3. Document preparation: Documents need to be thoroughly prepared for scanning: all staples, binders and fasteners removed, torn pages repaired, etc. Once scanned, documents need to be returned to their original condition: bound, stapled, etc.
4. Document Scanning and Image Enhancement: Use of state-of-the-art scanners will scan documents converting every page and every graphic to a digital file. If needed, they provider may be able to electronically enhance the digital images to make them better than the originals. By applying these enhancements, the documents will be clean and easier to read. However, images should be retained as the original, captured image, to ensure they are available if needed.
5. Delivery of Digital Documents: This will usually be offered on line through a secure information exchange portal. Digital documents may also be delivered in a format compatible to your in-house Document Management System.

The use of a contracted document management provider allows for:

1. Handling of a large case: Allows solo practitioners/small firms the ability to take on the complex, document intensive cases involving huge amounts of discovery and/or production.
2. Increased productivity: Employees spend less time searching for data and can devote more time to your core business.
3. Improved customer service: Because it is faster to find information, your clients, opposing counsel—and you—receive needed answers quicker.
4. Saves valuable office space : There is no need for bulky file cabinets or messy file boxes that take up valuable office space. By converting paper documents to digital files, you can operate more efficiently in a smaller space. And with the costs of office space spiraling upwards every year, this can mean a significant savings in the long run. It will also save on overhead: With the need for less space, you save on air conditioning, heating, and electricity. The long-term impact of this on your bottom line can be substantial.
5. Financial expert assistance with preparing Inventory & Appraisements, Mediation Spreadsheets, and Responses to Requests for Production: Your financial expert, already reviewing and analyzing documents, often can accurately and quickly summarize and condense vast amounts of information into digestible portions for the attorney/paralegal team to assimilate into the relevant portions of the case.

IV. ETHICAL CONSIDERATIONS FOR PARALEGALS AND THEIR SUPERVISING ATTORNEYS

A. Texas Paralegal's Creed

"I am committed to this Creed for no other reason than it is right." That is the last line of the first paragraph of the Texas Lawyer's Creed. That commitment is based on one's personal moral compass—not on what organization you happen to belong to or what license you hold.

It seems logical that not only lawyers should adhere to the highest ethical standards, but also should paralegals. After all, if an ethical attorney had an unethical

During the pendency of the case, a paralegal is indispensable . . . an involved paralegal can streamline and focus trial preparation, thereby saving the client money and allowing for more effective use of the lawyer's time.

paralegal working in the firm, what havoc could that wreak?

So, the Texas Lawyer's Creed was used as the guideline and was modified to conform to the paralegal's role in providing legal services alongside a supervising attorney. In 2012, the State Bar of Texas Standing Committee on Paralegals, chaired then by Chief Justice Linda Thomas (Ret.), reviewed the Texas Paralegal's Creed, made revisions the Standing Committee deemed necessary, and then presented it to the State Bar Board of Directors, requesting their approval.

On January 25, 2013, the State Bar Board of Directors considered the Texas Paralegal's Creed on their consent agenda and approved it. A copy of The Texas Paralegal's Creed is attached as Appendix A. The State Bar now includes a copy of the Texas Paralegal's Creed in CLE materials with the Texas Lawyer's Creed. Pass a copy on to your paralegals and other attorneys in your firm, as well as your clients as a declaration of your continued commitment to professionalism.

B. Texas Disciplinary Rules of Professional Conduct

Paralegals must heed the Texas Disciplinary Rules of Professional Conduct (TDPRC), or their supervising attorneys could face grievance and/or disciplinary actions. Paralegals who are members of the Paralegal Division of the State Bar of Texas must adhere to the Canons of Ethics (attached in Appendix B) to maintain membership and avoid disciplinary proceedings. In this section is a summary of some of the rules more applicable to paralegals:

Caveat: This section often paraphrases the rules that are cited. This is not a substitute for reading the complete text of a rule.

Below is an overview of only some of the rules and their applicability to the paralegal profession. Before discussing the individual rules, one must first understand the purpose and scope of the Texas Disciplinary Rules of Professional Conduct. The Preamble to the Rules states that they are "rules of reason" and "define proper conduct for purposes of professional discipline." (emphasis added) The preamble also states the Rules are not for the following purposes:

- Do Not exhaust the moral and ethical considerations that should guide a lawyer.
- Not an attempt to prescribe either disciplinary procedures or penalties for violation of a rule.
- Do Not undertake to define standards of civil liability of lawyers for professional conduct.
- Violation of a rule does not give rise to a private cause of action nor does it create any presumption that a legal duty to a client has been breached.
- Not designed to be standards for procedural decisions.
- Not intended to govern or affect judicial applications of either the attorney-client or work product privilege.

The Rules are divided into eight major categories: (1) Client-Lawyer Relationship, (2) Counselor, (3) Advocate, (4) Non-Client Relationships, (5) Law Firms and Associations, (6) Public Service, (7) Information About Legal Services, and (8) Maintaining the Integrity of the Profession. This section addresses only chapters 1, 3, 5 and 8. It's always a good idea to take the time to review the entire TDRPC.

1. Client-Lawyer Relationship

The first section of the Texas Disciplinary Rules of Professional Conduct involves the client-lawyer relationship. This Section includes fifteen separate rules and is the subject from which most of the litigation against lawyers has arisen. Be mindful of the fact that even though these rules were written for lawyers, paralegals should adhere to these rules where appropriate, and assist their supervising attorneys in maintaining the integrity of the legal profession. The "Comments" referred to below can be found in the text of the Rules, and are not included in this article. Of special note to paralegals are the following sub-sections:

a. Rule 1.03: Communication

This Rule requires a lawyer to keep the client reasonably informed about the status of a matter and promptly respond with reasonable requests for information. *Rule 1.03(a).* The premise behind this Rule is that a client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued. *Comment 1.* The extent of the communication is dependent upon the type of advice or assistance involved. *Comment 2.* In certain situations of practical exigency, a lawyer may be required to act for a client without prior consultation. *Id.*

A lawyer may be justified in delaying transmission of information when the lawyer reasonably believes the client would be likely to react imprudently to an immediate communication. *Comment 4.* Occasionally, rules or court orders may provide that certain information that is supplied to the lawyer may not be disclosed to the client. *Id.* A lawyer may not, however, withhold information to serve the lawyer's own interest or convenience. *Id.*

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. *Rule 1.03(b).* When a client is under a disability, a lawyer should seek to maintain reasonable communication insofar as possible. *Comment 5.* The extent of communication may be dependent upon

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- 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.

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mentorprogram@txpd.org

the extent of the client's competence and vary from case to case. *Id.*

The foregoing Rule 1.03 is the most applicable to the role of paralegal. Paralegals oftentimes are the first line of communication for the client, and may have the most interaction with the client. Many times, it will be up to the paralegal to keep the client informed, either by telephone or email. **Always, always, always** send your client copies of incoming and outgoing correspondence. **Always, always, always** return your client's phone calls. If you look through the Texas Bar Journal at the "Public and Private Reprimand" section, you will find that most of the actions taken against lawyers were, at least in part, for not keeping the client informed. Before you read any further, go back and read this section again. It's important.

b. Rule 1.05: Confidentiality of Information

"Confidential Information" includes both "privileged information" as defined in the Texas Rules of Evidence and "unprivileged client information." "Unprivileged information" is defined as **all information** relating to a client or furnished by a client, other than privileged information, acquired by the lawyer during the course or by reason of the representation of the client. *Rule 1.05(a).*

Except under a few narrow exceptions, a lawyer shall not knowingly reveal confidential information of a client or a former client. *Rule 1.05(b).* The lawyer's obligation to protect the confidential information of a client facilitates the proper representation of the client and encourages potential clients to seek early legal assistance. *Comment 1.* A lawyer cannot use confidential information of a client or a former client to that client's disadvantage or to the advantage of a lawyer of a third person unless the client consents after consultation. *Rule 1.05(b)(2), (3) & (4).*

Protection of client confidentiality is an area of prime importance to paralegals. Paralegals have full knowledge of the client's case, their personal financial matters, and the deepest innermost secrets of the person and their family. Great damage can be done to a client, the case, and the lawyer if the confidential information of a client is not protected scrupulously by the lawyer and the entire staff of the firm. This is a tenet to which lawyers and paralegals **must** adhere. Do not discuss the juicy details of a client's case on the elevator or in public places. Do not "name drop" if you represent a famous person or family. Resist the temptation to let people know that you know all about the inner workings of your client's well-known business.

TDRPC 1.05 (d) states that a lawyer may reveal confidential information in the following circumstances:

- Express authorization to carry out the representation.
- Client consents after consultation.
- To the client, the client's representatives or the members, associates, and employees of the lawyer's firm, except when otherwise instructed by the client.
- The lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rule of Professional Conduct, or other law.
- To the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client.
- To establish a defense to a criminal charge, civil claim or disciplinary complaint against the lawyer or the lawyer's associate based upon conduct involving the client or the representation of the client.

The best rule of thumb for a paralegal to follow is to **NEVER, NEVER, NEVER** reveal any details of a client's case. It is up to the lawyer to determine what is privileged and what is confidential.

A lawyer is required to reveal confidential information when a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act which is likely to result in death or substantial bodily harm to a person. *Rule 1.05(e).* Under those circumstances, the lawyer must reveal the confidential information only to the extent it reasonably appears necessary to prevent the client from committing the criminal or fraudulent act. *Id.* If a paralegal finds himself/herself in possession of information that comes under Rule 1.05(e), the attorney should be immediately informed. Let the lawyer make the determination if such information should be disclosed.

Maintaining Confidentiality of Information on Social Media: A Cautionary Tale

Maintaining confidentiality of information of course includes a prohibition on disseminating confidential information on social media. Lawyers need to be sensitive not only about their own social media activities but also about the activities of their staff. Here's a cautionary tale that reminds lawyers and paralegals to talk early and often about preserving confidences across all platforms:

In August 2019, a paralegal who had worked at the U.S. Attorney's office in New Jersey for nine years was indicted on witness tampering, obstruction of justice, conspiracy, and obtaining information from a governmental computer.

The allegations included that she used her position and Department of Justice-issued computer at the U.S. Attorney's office to help her son, a member of a street gang. Among the allegations:

- In 2016, at the request of a high-ranking gang member, the paralegal used her work computer to find sensitive information in databases of criminal cases to help the gang find cooperating witnesses, as well as to obtain the personal information of a rival gang member.
- In 2018, during the pending robbery case against the paralegal's son, his co-defendant gave a post-arrest statement to the police. The paralegal obtained the video footage of the statement, which was part of the discovery material for her son's pending court case. She then allegedly posted the video on YouTube to prove that the co-defendant was "snitching." She allegedly titled the video, "NYC Brim Gang Member Snitching Pt. 1." The posting of the video led to the co-defendant and his family receiving death threats from fellow gang members.
- In a search of the paralegal's home, investigators found video interviews with her son's co-defendant and another accomplice on her computer. Investigators also recovered text messages from the paralegal in which she complained that the co-defendant was "giving up murders, victims, shooters and all" and that her son "has no line of defense because his co-d told everything."

The paralegal pled not guilty, was released on a $75,000 bond, and was ordered to wear an ankle monitor, stay off social media, and refrain from contact with her son and other gang members.

c. Rule 1.06: Conflict of Interest: General Rule

In the TDRPC, the first and foremost rule is that a lawyer shall not represent opposing parties to the same litigation. *Rule 1.06(a)*. In other situations and except to the extent permitted by other subsections, a lawyer shall not represent a person if the representation of that person:

1. Involves a substantially related matter in which that person's interests are materially and directly adverse to the interest of another client of the lawyer or the lawyer's firm; or
2. Reasonably appear to become adversely limited by the lawyer or law firm's responsibility to another client or to a third person or the lawyer's or law firm's own interest.

Rule 1.06(b).

A lawyer may represent a client in circumstances outlined above in Subsection (b) only if:

1. Their lawyer reasonably believes the representation of each client will not be materially affected;

and

2. Each affected or potentially affected client consents to such representation after full disclosure of the existence, nature, implications and possible adverse consequences of the common representations and advantages involved, if any.

Rule 1.06 (c)

The meaning of "directly adverse" is the lawyer's independent judgment on behalf of a client or the lawyer's ability or willingness to consider, recommend or carry out a course of action which will be or is reasonably likely to be adversely affected by the lawyer's representation of, or responsibilities to, the other client. *Comment 6.*

A lawyer representing a criminal defendant was required to withdraw under Rule 1.06 because one of his law partners was married to the prosecuting attorney assigned to the case. *Haley v. Boles*, 824 S.W.2d 796 (Tex. App.—Tyler 1992, no writ).

A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute. *Rule 1.06(d)*. The term "opposing parties" contemplates a situation where judgment favorable to one of the parties will directly impact unfavorably upon the other party. *Comment 2.*

If a lawyer has accepted representation in violation of Rule 1.06 or if multiple representation becomes improper under Rule 1.06, the lawyer must withdraw to the extent necessary for the remaining representation not to be in violation of these rules. *Rule 1.06(e).*

If a lawyer is prohibited by Rule 1.06 from engaging in a particular conduct, **no other lawyer while a member or associate with that lawyer's firm may engage in that conduct.** *Rule 1.06(f).*

d. Paralegal Conflict

The rule regarding Conflict of Interest has become more prominent in the paralegal profession. Disqualification of firms because of non-lawyer employees (paralegals, among others) has resulted in litigation that has gone all the way to the Texas Supreme Court.

Even in the largest of Texas cities, the family law community is a small, relatively closed group. Many paralegals change firms within a certain geographically defined area over the course of their careers. More and more, it has become of more concern in the family law community, as well as other spe-

cialty areas, that a potential conflict of interest exists if a paralegal leaves Firm A and goes to work for Firm B, when Firm B is representing the opposite side of a case against Firm A, and the paralegal has confidential knowledge of the case while employed with Firm A. Before hiring a new paralegal, or changing firms, check to see if there are any cases the two firms have in common, and if a potential conflict might arise. There are ways to protect against a conflict, by using the "Chinese Wall" approach and not letting the new paralegal work on the case. However, it is important that this problem is known **in advance**, because after the fact may be too late to save your firm from being "conflicted out" of a lucrative case. There are two Supreme Court cases cited here that address this issue specifically: *Phoenix Founders, Inc. v. Hon. John McClellan Marshall*, 887 S.W.2d 831 (Tex. 1994), and *Don Grant v. The Thirteenth Court of Appeals*, 888 S.W.2d 466 (Tex. 1994). In both cases, the Texas Supreme Court decided that "disqualification is not required if the rehiring firm is able to establish that it has effectively screened the paralegal from any contact with the underlying suit" *See Phoenix Founders*, 887 S.W.2d at 831. In the *Grant* case, the law firm was disqualified because it failed to effectively screen the legal secretary from working on the conflicting case, and further stated, "[W]e recognize a rebuttable presumption that a nonlawyer who switches sides in ongoing litigation, after having gained confidential information at the first firm, will share the information with members of the new firm. The presumption may be rebutted upon a showing that sufficient precautions have been taken to guard against any disclosure of confidences." *See Grant*, 888 S.W.2d at 467.

A law firm is not disqualified from representing a client when a paralegal or secretary has taken employment of a party adverse to a client of the paralegal's former employer, if the supervising lawyer of the paralegal or secretary ensures the nonlawyer's conduct is compatible with the professional obligations of a lawyer. Tex. Ethics Comm'n Op. 472 (1991).

Note that this **DOES NOT APPLY** to lawyers. If a lawyer changes firms, then absent the express agreement of all parties, the "Chinese Wall" cannot be used, and the lawyer with the conflict, and that firm, are prohibited from representing the client. This is the fundamental difference between lawyer conflicts and paralegal conflicts. The Texas Supreme Court recognized that if paralegals were held to the same stringent standards as lawyers, then those paralegals who had been in the business for a while who specialize in certain practice areas or who work in small geographic areas would be virtually unemployable by most firms if they wanted to stay in their field of specialty or in their city of choice, and thus would be locked in to working for one employer. Lawyers have licenses, and can work for themselves. Paralegals must work under the supervision of an attorney and do not have the career flexibility that licensed attorneys have.

2. Advocate

a. Rule 3.05: Maintaining Impartiality of Tribunal

Paralegals are under the same obligations as lawyers when it comes to discussing a case with or in the presence of a judge. Make sure that if a member of your staff is at the courthouse, or speaking with a judge, that the paralegal follows the guidelines against *ex parte* communications set out in Rule 3.05:

This Rule basically prohibits a lawyer from communicating *ex parte* with the Court. Historically, *ex parte* contacts between a lawyer and a tribunal have been subjected to stringent control due to the potential for abuse. *Comment 3.* In addition to this Rule, forms of improper influence upon tribunals are also proscribed by criminal law, by applicable Rules of Practice or Procedure, and the Texas Code of Judicial Conduct. *Comment 1.*

A lawyer shall not seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable Rules of Practice or Procedure. *Rule 3.05(a).* A lawyer may communicate or cause another to communicate *ex parte* with a tribunal for the purpose of influencing that entity or person concerning a pending matter only in the following circumstances:

1. In the course of official proceedings in the cause;
2. In writing, if he promptly delivers a copy of the writing to opposing counsel or the adverse party if he is not represented by a lawyer;
3. Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

Rule 3.05(b).

3. Law Firms and Associations

This section addresses issues that arise related to law firms and associations.

a. Rule 5.01: Responsibilities of a Partner or Supervisory Lawyer

A lawyer is not vicariously liable for the acts of another lawyer, but is only exposed to discipline for his or her own knowing actions or failures to act. *Comment 5.* The Rule subjects a lawyer to discipline because of another lawyer's violation if:

1. The lawyer is a partner or supervising lawyer and orders, encourages, or knowingly permits the conduct involved; or
2. The lawyer is a partner in a law

firm in which the other lawyer practices, is the general counsel of a government agency's legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and with knowledge of the other lawyer's violation of these Rules, knowingly fails to take reasonable remedial action to avoid to mitigate the consequences of the other lawyer's violation. *Rule 5.01.*

Whether a lawyer has "direct supervisory authority over the other lawyer" in a particular circumstance is a question of fact. *Comment 3.* In some instances, a senior associate may be a supervising attorney. *Id.*

A partner or other authoritative lawyer as defined by the Rule is required to take reasonable remedial actions to avoid or to mitigate the consequences of the other lawyer's known violation. *Comment 4.* The appropriate remedial action is dependent upon the circumstances. *Id.*

b. Rule 5.02: Responsibilities of a Supervised Lawyer

When a lawyer acts under the supervision of another person, the lawyer does not violate these Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional conduct. *Rule 5.02.* This exception is narrow.

The fundamental concept is that every lawyer is a trained, mature, licensed professional who is sworn to uphold ethical standards and who is responsible for his or her own conduct. *Comment 1.* This special defense recognizes that the inexperienced lawyer working under the direction or supervision of an employer or senior attorney is not in a favorable position to disagree with reasonable decisions made by the experienced lawyer. *Comment 4.* Often, the only choices available to the supervised lawyer would be to accept the decision made by the senior lawyer or to resign or to otherwise lose the employment. *Id.* This Rule is not to be construed as a defense to a supervised lawyer who participates in clearly wrongful conduct. *Comment 5.*

c. Rule 5.03: Responsibilities Regarding Nonlawyer Assistance

This Rule governs secretaries, investigators, law students, interns, and paraprofessionals employed by lawyers. *Comment 1.* The lawyer who has direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer. *Rule 5.03(a).*

The lawyer will be subject to discipline for the conduct of a nonlawyer who would be in violation of these Rules if engaged by the lawyer if:

a. The lawyer orders, encourages, or permits the conduct involved; or
b. The lawyer:
   1. Is a partner in the law firm in which the person is employed, retained by, or associated with; or
   2. Is the general counsel of the government agency's legal department in which the person is employed, retained by or associated with; or
   3. Has direct supervisory authority over such persons and
c. With knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable or remedial action to avoid or mitigate the consequences of that person's misconduct. *Rule 5.03(b).*

d. Rule 5.04: Professional Independence of a Lawyer

A lawyer or a law firm is prohibited from sharing or promising to share legal fees with a nonlawyer except as follows:

a. An agreement by a lawyer with the lawyer's firm, partner, or associate, or a lawful court order may provide for the payment of money, over a reasonable period of time, to the lawyer's estate for the benefit of the lawyer's heirs or personal representatives, beneficiaries, or former spouse, after the lawyer's death or as otherwise provided by law or court order;
b. A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that portion of the total compensation which fairly represents the services rendered by the deceased lawyer; and
c. A lawyer or law firm may include non-lawyer employees in retirements, even though the plan is based in whole or in part on a profit sharing arrangement. *Rule 5.04(a).*

These limitations are designed to prevent solicitation by lay persons of clients for lawyers and to avoid encouraging or assisting nonlawyers in the practice of law. *Comment 1.* Rule 5.04(a) does not necessarily mandate that employees be paid only on the basis of a fixed salary. *Comment 3.* The payment of an annual or other bonus does not constitute the sharing of legal fees if the bonus is neither based on a percentage of the law firm's profits or on a percentage of particular legal fees, nor is given as a reward for

conduct forbidden to lawyers. *Id.*

A lawyer is prohibited from forming a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law. *Rule 5.04(b).*

A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services. *Rule 5.04(c).* This situation arises frequently when a third party is paying the legal fees for another. The lawyer should always exercise his professional judgment solely on behalf of the client. *Comment 4.*

The lawyer is prohibited from forming a professional corporation or association authorized to practice law for profit under the following circumstances:

a. A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
b. A nonlawyer is a corporate director or officer thereof; or
c. A nonlawyer has the right to direct or control the professional judgment of a lawyer. *Rule 5.04(d).*

e. Rule 5.05: Unauthorized Practice of Law

A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction. *Rule 5.05(1).* A lawyer is further prohibited from assisting a person who is not a member of the Bar in the performance of activity which constitutes the unauthorized practice of law. *Rule 5.05(2).*

Limiting the practice of law to members of the Bar protects the public against rendition of legal services by unqualified persons. *Comment 2.* The lawyer may, however, counsel nonlawyers who wish to proceed *pro se*, because a self-represented litigant is not engaged in the unauthorized practice of law. *Comment 4.*

Rule 5.05 does not prohibit a lawyer form employing the services of paraprofessionals and delegating functions to them. *Id.* The lawyer must, however, supervise, the delegated work and retain responsibility for the work. *Id.*

f. Rule 5.08: Prohibited Discriminatory Activities

Rule 5.08 provides that lawyers shall not "manifest, by words or conduct" bias or prejudice based on race, sex, color, national origin, religion, disability, age, or sexual orientation toward any person involved in a court proceeding during such proceeding. This does NOT apply, however, to a lawyer's decision whether to represent a particular person, or to the process of jury selection, or communications protected as "confidential information" under these Rules or to appropriate and necessary advocacy.

A paralegal's conduct should be the same as the attorney's, *i.e.*, behaving in such a manner in Court that does not violate Rule 5.08 and subject the attorney to disciplinary procedures.

4. Maintaining the Integrity of the Profession

a. Rule 8.04: Misconduct

A lawyer shall not:

(1) Violate these Rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;
(2) Commit a serious crime, or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(4) Engage in conduct constituting obstruction of justice;
(5) State or imply an ability to influence improperly a government agency or official;
(6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Rules of Judicial Conduct or other law;
(7) Violate any disciplinary or disability order or judgment;
(8) Engage in conduct that constitutes barratry as defined by the law of this State;
(9) Fail to comply with Article X, Section 32 of the State Bar Rules;
(10) Engage in the practice of law when the lawyer's right to practice has been suspended or terminated, or the lawyer is on inactive status or when under administrative suspension; or
(11) Violate any other laws of this state related to the professional conduct of lawyers and for the practice of law.

Rule 8.04(a).

This Rule provides a comprehensive restatement of all forms of conduct that will subject a lawyer to discipline under either these Rules, the State Bar Act or the State Bar Rules. *Comment 2.*

Although a lawyer is personally answerable to the entire body of criminal laws, a lawyer should be professionally answerable only for offenses that indicate a lack of those characteristics relevant to fitness to practice of law. *Comment 5.* A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligations that legitimately could call a lawyer's overall fitness to practice into question. *Id.*

The term "serious crime" as used in this Rule means any felony involving moral turpitude, any misdemeanor involving theft, embezzlement, or fraudulent misappropriation of money or other property, or any attempt, conspiracy, or solicitation of another to commit any of the foregoing. *Rule 8.04(b).*

Even though the attorney bears the ultimate responsibility for adherence to these rules, it is incumbent upon paralegals to know what the consequences of their actions could be, for the supervising attorney, the client and the paralegal. The lawyer being unaware of the actions of the non-lawyer employee is not an excuse. "Good faith" is not a defense to attorney malpractice. *Cosgrove v. Grimes*, 774 S.W.2d 662 (Tex. 1989).

To maintain the integrity of the paralegal profession, every paralegal should be familiar with the Texas Disciplinary Rules of Professional Conduct and uphold them, as well.

V. PARALEGAL "CRIME AND PUNISHMENT"

Most attorneys are unaware that a grievance procedure exists for paralegals, so let's enlighten you and your paralegal.

The Paralegal Division of the State Bar of Texas (PD) has promulgated rules for the reporting of ethical violations ("crimes") of members, and procedures for the investigation and determination of such reports ("punishment"). The paralegal of yesterday was accountable to the supervising attorney. The paralegal of today is accountable not only to the attorney for whom the paralegal works, but also to the legal system, the judicial system, and the public. To paraphrase the preamble to the Disciplinary Rules of Professional Conduct: "A Paralegal, together with the supervising attorney, is a representative of clients, and a public citizen having special responsibility for the quality of justice. Paralegals and Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires and understanding by Paralegals of their relationship with and function in the legal system. A consequent obligation of Paralegals is to maintain the highest standards of ethical conduct."

For paralegals (and their supervising attorneys), ethical behavior involves following not only internal guiding principles, but also the Texas Disciplinary Rules of Professional Conduct and the Code of Ethics and Professional Responsibility. (See Appendix B)

The Professional Ethics Committee of the PD is responsible for interpreting the Division's Code of Ethics and Professional Responsibility, serving as a Grievance Committee, and providing the membership with education on ethical issues. This Committee is also responsible for investigating any complaint it receives against a member of the Division pursuant to the Disciplinary Procedures. The Standing Rules provide for a grievance procedure the handles complaints against Division members. The latest version of the Standing Rules (effective June 2019) may be found at: https://txpd.org/files/file/perma-link/PD%20Standing%20Rules.pdf.

If the paralegal against whom a complaint has been lodged is not a member of the PD, there is nothing to stop that person's unethical behavior, unless it encompasses the unauthorized practice of law as defined in the Texas Government Code, Sec. 81.101, then that person could be subject to injunction and the supervising attorney to disciplinary action.

If the paralegal is a member of the PD, then a written complaint shall be forwarded to the PD Executive Director, who shall in turn forward it to the Chair of the Professional Ethics Committee ("Chair") for investigation. If a complaint involves an attorney and paralegal, then the Chair shall forward a copy of the complaint to the General Counsel of the State Bar, without comment. **All proceedings involving such complaint shall be confidential.** Any correspondence concerning a complaint shall be transmitted in an envelope marked "**PERSONAL & CONFIDENTIAL: TO BE OPENED BY ADDRESSEE ONLY.**"

The investigating committee shall interview the complainant, gather names and addresses of persons with knowledge of relevant facts; interview the paralegal and possibly the supervising attorney, and all persons identified by the complainant and the paralegal; and conduct any other such investigation as necessary. A hearing shall be scheduled within 90 days of receipt of the written complaint. The paralegal shall have 30 days written notice of the hearing, and the paralegal then has 20 days in which to respond. An extension of not more than 30 days may be granted for good cause shown.

At the hearing, all persons testifying shall be sworn to tell the truth; any party may present witnesses to testify and present evidence relevant to the allegations contained in the complaint; the paralegal has the right to be present during all testimony, with counsel, at the paralegal's expense, if so desired. The Chair shall determine the order of appearance of witnesses; each witness shall be heard privately and out of the presence of the other witnesses. The hearing shall be recorded, then immediately reduced to writing. The original of the recorded hearing and written transcript are sent to the Executive Director, who shall keep such record in the confidential files of the Division. It shall not be available to anyone other than the Professional Ethics Committee and the Board sitting as the Disciplinary Committee.

Within 10 days of the hearing, a finding of "No Professional Misconduct" or "Professional Misconduct" shall be made. A determination of "Professional Misconduct" shall include a recommendation for disciplinary action. A finding of "No Professional Misconduct" will close the file with notice to the paralegal and the Complainant.

A paralegal who has been found to have committed "Professional Misconduct" has ten days from receipt of the notice to appeal. If no appeal is filed, the finding becomes final and the Chair recommends to the Board of Directors disciplinary action. The Board of Directors meets in executive session as a Disciplinary Committee to determine appropriate disciplinary action. The paralegal, the paralegal's counsel, if any, and the Committee Chair may appear. The Board may consider any testimony or evidence presented.

Sanctions include private reprimand, public reprimand, or suspension or expulsion of membership in the PD. A private reprimand consists of the Board calling the paralegal to appear and hear the reprimand and any conditions connected therewith. The identity of the paralegal remains confidential. A public reprimand is announced in open session along with the sanction. The name, county, and place of business of the paralegal and the sanction imposed shall be published to the general membership. The same is done in the case of suspension or expulsion of membership.

Aside from the obvious deterrents to engaging in unethical behavior, think about the consequences for a paralegal who receives a public reprimand. Not only is the paralegal's name published to the general membership, but also the paralegal's employer's name is in print for all to see. It should also be noted that a paralegal who has been found to have committed professional misconduct will have to report same on any application to the Texas Board of Legal Specialization (TBLS) to sit for the specialty certification examination in any area. The Legal Assistants Advisory Commission and TBLS may deny certification or recertification if a finding by the Professional Ethics Committee or any Paralegals' organization, an Unauthorized Practice of Law Committee, or court find that an applicant has been guilty of professional misconduct.

VI. ETHICAL BILLING PRACTICES

Law firms sell their time. Whether it is a flat fee, hourly rates, or contingent, billing practices all come down to: how much time did it take to perform a task, and how is that time charged to the client?

Billing practices may begin as early as the very first call the potential client makes to the law firm. Disclosure of the firm's billing rates in the initial contact the client has with the firm lets the client know you are not trying to "hide the ball" or misrepresent what the fee structure is, and that there is full disclosure about expectations for billing the client and being paid by the client.

Texas Disciplinary Rule of Professional Conduct 1.04 sets out the attorney's obligations regarding fees. Pursuant to TDRPC 5.03(a), "a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer." Therefore, TDRPC 1.04 applies to the conduct of paralegals, where applicable, when looking at billing practices.

Paralegals cannot set the fees. But a paralegal can, under the direction of an attorney, disclose to the client the fee structure in place for the employer attorney or law firm. The paralegal should have a thorough understanding of the firm's billing practices, philosophies, and expectations. What protocols does the firm have when discussing fees with clients? What does the firm expect of the paralegal regarding this issue? How does the firm bill for time? How much detail does the firm want in the billing that goes to the client?

Some questions regarding ethical billing practices are "black and white," and some fall in a gray area. Some examples of the "black and white" ethical billing issues are:

- Padding the bill: This may arise when trying to meet a requirement for billing a certain number of hours per month or if a paralegal receives an incentive for billing "extra" hours each month. If a task took one hour, it is unethical to bill for more than that amount of time.
- "Churning": Doing unnecessary work on a case for which you bill the client. Examples would be drafting a motion that you knew was not going to be needed, or preparing two pieces of correspondence when one would suffice.
- Billing for work you did not do yourself: If you delegate a task to a person in the firm who does not bill time, and then you bill the client for the task as if you performed it, that would be unethical.
- Billing for work you haven't done yet: Entering billable time for a task that you intend to complete in the future, to meet monthly billing requirements or to make up billable hours.
- Billing multiple clients for work done during the same time period: An example would be billing the client for an hour of drafting a pleading, but during that hour, you took a 15-minute phone call from another client and billed one client for an hour, and the other client for one-quarter of an hour, when you only spent one hour total on both.
- Billing for "sweat equity": Because of years of experience and software improvements, what used to take 2 hours to prepare may now only take 45 minutes. Or, what takes an inexperienced paralegal 2 hours only takes the experienced paralegal an hour to accomplish.
- Spreading out your billable hours to cover the whole day (or more than the

whole day): It is virtually impossible to bill every minute of your workday. Everyone spends some nonbillable time, screening prospective clients, taking restroom breaks, generally organizing your desk, taking nonclient phone calls, and the like.

Then there are the "gray" areas of law firm billing, the What, When, Where, and How ("Who" is not gray—the person performing the task bills for the task):

- What: Sometimes the line between "substantive legal work" and clerical work can become blurry for a paralegal. Are you just copying exhibits for trial, or are your reviewing them as you make copies, determining the application of the exhibits to the issues before the Court, what your supervising attorney may need, in what order, etc.? Should this time be divided between billable and nonbillable? How do you calculate such a division?
- When: If you have to travel an hour to get to the courthouse for a hearing, is it your firm's policy to bill for that time? Is this disclosed to the client ahead of time?
- Where: If your firm has two separate cases for one client, but the work is substantially the same for both cases, where is the time for the task you performed recorded? If your firm is withdrawing from representing a client, is this recorded as billable or nonbillable time to the client? Does the issue of "the client fired the attorney" or "the attorney fired the client" come into play?
- How: How much detail of work performed should be put into the bill? Are the client's billing records subject to being produced to the opposing party? Who redacts the confidential information and how much information in the bill is redacted? How are billing errors handled?

There are no easy answers or guidelines that cover all of the above scenarios, but there are ways to help paralegals (and attorneys) avoid unethical billing practices, which include:

- Be aware of all of your supervising attorney's and/or firm's billing practices and procedures. When in doubt: ASK. And don't be afraid to make suggestions that may help the firm. Billing is the lifeline of our profession and the practice of law. Most of us are not lucky enough to be able to work in this business for free, and billing pays our salaries. Become familiar with the billing software used by the firm.
- Be open and forthright with the client about the firm's billing policies and procedures from the very inception of the attorney/client relationship. Making a client aware of the policies and procedures (in writing, typically in the firm's fee agreement or engagement letter with the client), then it is more difficult for the client to come back later and complain about a lack of knowledge. And even before the client retains the attorney or firm, provide the client with the firm's hourly rates, consultation fees, and any other applicable fees that are requested.
- Respond promptly to a client's questions regarding the billing statement. Ask (in the engagement letter) that the client contact the firm within a certain period of time of receiving a billing statement or invoice with any questions or concerns they may have. If the client waits until the end of a case that took 2 years to litigate to ask questions about the first billing, it will likely be much more difficult to answer after the passage of so much time.
- Correct billing errors as soon as they are found. Provide a full explanation of the error in writing to clients, even if the client did not notice the error.
- Hold periodic billing meetings, where only the billing matters are discussed for each client. If you combine this type of meeting with a case status meeting, it is easy to get offtrack and talk about the case, rather than if the client is timely with their payments, if the attorney is willing to let a receivable wait, if the client needs to be contacted about payment and the like.
- If you provide a service to a client for which you are NOT going to bill the client, then list the service provided on the client's bill and (usually in capital letters) indicate that it was a NO CHARGE on the bill. The benefits are twofold: you are providing the client with information about what services you are providing, and there is a psychological benefit to the client seeing "NO CHARGE" on their bill.
- Do not use abbreviations or terminology on the billing that a client will not understand. If the bill is easy to read and understand, it will be more likely to be paid.
- Review the billing before it goes to the client. This guards against typing errors, as well as any obvious gaps in services performed, *i.e.*, if you got busy and forgot to enter time for services performed. Read the bill as if it were yours. What would you want to see/not see on the bill? Is it easy to tell what was billed, who provided the service and what is owed? Also, read the bill as if you were the trial judge and the bill is an exhibit. Does it provide the court with the information needed to make an award of fees?

Attorney and law firm billing has come under increasing scrutiny by clients and by the courts. Clients are educating themselves on billing practices and are more sophisticated in reviewing billing statements and asking pertinent questions. Errors in billing statements to the client harm the credibility of the client, the law firm, and the staff at the courthouse. Unethical billing practices are more likely to trigger grievances being filed by clients.

Maintaining professionalism and a high standard of ethics in the billing process is paramount in providing quality services to clients, maintaining client satisfaction, and upholding the integrity and reputation of the firm.

VII. PARALEGAL EDUCATION AND TRAINING

The educational options for paralegals are as numerous as the opinions on how to streamline the discovery process. The problem is, not all of those educational options are adequate. Questionable online courses abound. When interviewing for a paralegal, pay attention to where the person received educational training. If the school does not sound familiar, investigate. Ask the applicant some questions about the institution, *i.e.*, where it is, how long was the course, scope of classes taken, was a certificate issued, is it ABA-approved? The American Bar Association has instituted a process whereby a school must meet certain criteria, complete extensive forms and information, and submit to an on-site inspection by a team appointed by the ABA's Standing Committee on Paralegals before it can be ABA-approved There certainly are decent programs that are not ABA-approved, but if you are interviewing someone who has successfully completed an ABA-approved course of study, you can be fairly confident the person has received an intensive education in the paralegal field. You can find a directory of ABA-approved paralegal programs here: https://www.americanbar.org/groups/paralegals/paralegal-resource-directory/.

Be careful not to limit your options, however. There are also highly qualified and experienced paralegals who have received on-the-job training who would be excellent additions to your law practice.

A good family law paralegal requires more than just educational training. Personality and intrinsic traits such as good listening and oral communication skills, an even disposition in dealing with the most difficult clients, sound ethics, good work habits, pride in work, sound judgment, loyalty, and professional responsibility are just some of the essential qualifications for a good paralegal.

It is imperative for a firm to establish consistent qualifications for hiring paralegals, to avoid any dissention or resentment among the paralegals themselves. Consider different requirements for entry-level as compared with experienced paralegals, and what training the firm is able/willing to offer. Determine benefits packages and other incentives for hiring qualified paralegals. Turnover is expensive, so develop a plan to keep your paralegal satisfied with the career and position with your firm. It will pay off in the long run.

APPENDIX A
TEXAS PARALEGAL'S CREED

I work with, and under the supervision of, a lawyer who is entrusted by the People of Texas to preserve and improve our legal system. I realize that unethical or improper behavior on my part may result in disciplinary action against my supervising attorney. As a Paralegal, I must abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

I. OUR LEGAL SYSTEM
A Paralegal owes to the administration of justice personal dignity, integrity, and independence. A Paralegal should always adhere to the highest principles of Professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I will work with my supervising attorney to educate clients, the public, and other lawyers and Paralegals regarding the spirit and letter of this Creed.
3. I will always be conscious of my duty to the judicial system.

II. PARALEGAL TO CLIENT
A Paralegal owes to the supervising attorney and the client allegiance, learning, skill, and industry. A Paralegal shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by self interest.

1. With, and under the direction of, my supervising attorney, I will endeavor to achieve the client's lawful objectives in legal transactions and litigation as quickly and economically as possible.
2. I will be loyal and committed to the client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my ability to be objective.
3. I will inform the client that civility and courtesy are expected and not a sign of weakness.
4. I will inform the client of proper and expected behavior.
5. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
6. I will inform the client that my supervising attorney and I will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
7. I will inform the client that my supervising attorney and I will not pursue tactics which are intended primarily for delay.

III. PARALEGAL TO OPPOSING LAWYER
A Paralegal owes to opposing counsel and their staff, in the conduct of legal transactions and pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements

and mutual understandings. Ill feelings between clients shall not influence a Paralegal's conduct, attitude, or demeanor toward opposing counsel or their staff. A Paralegal shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will identify for other counsel and parties all changes made by my supervising attorney in documents submitted for review.
3. I will attempt to prepare drafts for my supervising attorney's review which correctly reflect the agreement of the parties and not arbitrarily include provisions which have not been agreed upon or omit provisions necessary to reflect the agreement of the parties.
4. I will notify opposing counsel, and, if appropriate, the Court, Court staff, or other persons, as soon as practicable, when hearings, depositions, meetings, conferences, or closings are canceled.
5. I can relay a disagreement without being disagreeable. I realize that effective representation by my supervising attorney does not require antagonistic or obnoxious behavior. I will not encourage or knowingly permit the client to do anything which would be unethical or improper if done by me or my supervising attorney.
6. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel, nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony toward opposing counsel, opposing counsel's staff, parties, and witnesses. I will not be influenced by ill feelings between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel or other Paralegals.
7. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.
8. I will assist my supervising attorney in complying with all reasonable discovery requests. I will not encourage the client to quibble about words where their meaning is reasonably clear.

IV. PARALEGAL AND JUDGE

Paralegals owe judges and the Court respect, diligence, candor, and punctuality. Paralegals share in the responsibility to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.
2. I will conduct myself in Court in a professional manner, and demonstrate my respect for the Court and the law.
3. I will treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility.
4. I will be punctual and will assist my supervising attorney in being punctual.
5. I will not engage in any conduct which offends the dignity and decorum of proceedings.

Approved by the State Bar of Texas Board of Directors, January 2013

APPENDIX B
CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY OF THE PARALEGAL DIVISION OF THE STATE BAR OF TEXAS

Preamble

Fundamental to the success of any professional organization are the integrity of its members and a high standard of conduct. This Code of Ethics and Professional Responsibility is promulgated by the Paralegal Division of the State Bar of Texas and accepted by its members to accomplish these ends.

The paralegal profession is by nature closely related to the legal profession. Although the Code of Professional Responsibility of the State Bar of Texas does not directly govern paralegals except through a supervising attorney, it is incumbent upon the members of the Paralegal Division to know the provisions of the attorneys' code and avoid any action which might involve an attorney in a violation of that code or even the appearance of professional impropriety.

The canons set forth hereafter are intended as a general guide, and the enumeration of these canons does not exclude others of equal importance although not specifically mentioned.

Canon 1. A paralegal shall not engage in the practice of law as defined by statutes or court decisions, including but not limited to accepting cases or clients, setting fees, giving legal advice or appearing in a representative capacity in court or before an administrative or regulatory agency (unless otherwise authorized by statute, court or agency rules); the paralegal shall assist in preventing the unauthorized practice of law.

Canon 2. A paralegal shall not perform any of the duties that attorneys only may perform or do things which attorneys themselves may not do.

Canon 3. A paralegal shall exercise care in using independent professional judgment and in determining the extent to which a client may be assisted without the presence of any attorney, and shall not act in matters involving professional legal judgment.

Canon 4. A paralegal shall preserve and protect the confidences and secrets of a client.

Canon 5. A paralegal shall not solicit legal business on behalf of an attorney.

Canon 6. A paralegal shall not engage in performing paralegal functions other than under the direct supervision of an attorney, and shall not advertise or

contract with members of the general public for the performance of paralegal functions.

Canon 7. A paralegal shall avoid, if at all possible, any interest or association which constitutes a conflict of interest pertaining to a client matter and shall inform the supervising attorney of the existence of any possible conflict.

Canon 8. A paralegal shall maintain a high standard of ethical conduct and shall contribute to the integrity of the paralegal profession.

Canon 9. A paralegal shall maintain a high degree of competency to better assist the legal profession in fulfilling its duty to provide quality legal services to the public.

Canon 10. A paralegal shall do all other things incidental, necessary or expedient to enhance professional responsibility and the participation of paralegal in the administration of justice and public service in cooperation with the legal profession.

Adopted March 27, 1982, Amended June 26, 2005 - Paralegal Division, State Bar of Texas (available at https://txpd.org/code_of_ethics%20.asp).

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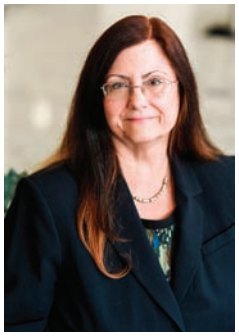

Paralegal Ethics Handbook

The Paralegal Ethics Handbook is a resource for all paralegals, attorneys, and members of the legal community that addresses ethical considerations for 17 practice areas, as well as considerations for in-house, corporate, freelance, administrative, governmental, and regulatory law paralegals. The PEH:

- Examines topics such as defining ethics, ethical obligations, and remaining ethical;
- Addresses ethical considerations for e-filing, e-discovery, and technology;
- Provides resources for state information and paralegal association ethics cannons, plus related information; and
- Contains rules and regulations for all 50 states and Washington, D.C.

The PEH explains how to determine whether an action may be an ethical violation.

Authored by Paralegal Division members, with input from the legal community. Published by Thomson Reuters.

https://tinyurl.com/txpdPEH

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Focus on . . .

Guide to Responding to Data Breaches and Reporting Cybersecurity Incidents to Law Enforcement and Governmental Agencies (Part 2 of 3)

By Shawn Tuma

UNDERSTANDING BASIC "DATA BREACH" FOUNDATIONS.

When a company has a cybersecurity or privacy event that potentially jeopardizes the confidentiality, integrity, or availability of information, it may need to do several things that seem to be quite similar and can create confusion as to which does what. It may need to report the event to law enforcement, disclose it to state and federal regulators, and notify data subjects whose information was involved. While they all sound similar, each is different and has a different purpose. In order to understand these distinctions, it is important to understand some foundational principles.

Is an Event an "Incident" or "Breach"?

The first place to start is by determining whether the organization has even experienced a data breach. Or, has it experienced a cybersecurity incident? Facially this may appear to be a question of semantics but the implications can be substantial. All breaches are incidents but not all incidents are breaches.

The words "data breach" are often used generically to describe all cybersecurity events without regard to whether any data was actually breached. Cybersecurity "incidents" is a better way to generically describe these events because it is broader and can encompass both incidents where data has been compromised and those where data was not compromised.

The National Institute of Standards and Technology (NIST) *Computer Security Incident Handling Guide*[14] is an official publication of the United States government. Perhaps more importantly, federal regulatory agencies tend to look to NIST cybersecurity standards when evaluating companies' cybersecurity practices. The Federal Trade Commission (FTC) has recently gone as far as publishing how the NIST cybersecurity framework meshes together with its own data security program.[15] Companies would be well advised to carefully observe the NIST Cybersecurity Framework.

Incident.

Incident is defined by the NIST Cybersecurity Framework as "a violation or imminent threat of violation of computer security policies, acceptable use policies, or standard security practices."[16] The United States Department of Justice provides a more detailed definition of incident as "An occurrence that actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits or that constitutes a violation or imminent threat of violation of security policies, security procedures, acceptable use policies or standard computer security practices."[17]

Breach.

Breach is not defined by the NIST Cybersecurity Framework, however, the DOJ provides a definition: "The term "breach" is used to include the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to information, whether physical or electronic. It includes both intrusions (from outside the organization) and misuse (from within the organization)."[18]

Incident is a broader term to describe an event that actually or *potentially* jeopardizes the confidentiality, integrity, or availability of a computer network or the information stored on or transmitted by the computer network. *Breach* is a narrower term that describes the actual loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or unauthorized access of information – data. For example, an incident that results in unauthorized acquisition of personally identifiable information in unencrypted form would be a breach. If the information were encrypted and the means for decrypting were not available, it would not be a breach[19] though it would still be an incident.

Is Ransomware a Breach or an Incident?

Crypto style ransomware has created ambiguity between traditional distinctions of incidents and breaches. There are many variations of this kind of malware which

all have the "defining characteristic that it attempts to deny access to a user's data, usually by encrypting the data with a key known only to the hacker who deployed the malware, until a ransom is paid."[20] This can be devastating as it can encrypt the data on a computer, computer network, any attached drives, backup drives, and potentially other computers on the network.[21] Given that this data was typically only encrypted and made unavailable to the user but was not actually obtained by the bad actor, most people did not consider it to be a breach of the data.[22]

In early July 2016, the U.S. Department of Health and Human Services (HHS) issued a directive on ransomware that classified it as a presumptive breach under the Health Insurance Portability and Accountability Act (HIPAA) for two reasons.[23] First, because there are some variants of ransomware that also destroys or exfiltrates data or works in conjunction with other malware that does so. Second, "[w]hen electronic protected health information (ePHI) is encrypted as the result of a ransomware attack, a breach has occurred because the ePHI encrypted by the ransomware was acquired (i.e., unauthorized individuals have taken possession or control of the information), and thus is a "disclosure" not permitted under the HIPAA Privacy Rule."[24] Under the HHS guidance, there is a presumption that it is a breach, however, there is a multifactor assessment that can be used to show circumstances where it may not be considered a breach.

As of the drafting date, the HHS directive is the only major one that has publicly classified ransomware as a breach and that only applies to situations dealing with protected health information (PHI) under HIPAA. Thus, ransomware that attacks PHI will be presumed to be a breach whereas ransomware that attacks other forms of information, including what is commonly understood as being personally identifiable information (PII) is generally not considered a breach. Of course, there may be exceptions, it could change at any time, and it will likely evolve.

Is Encryption a Blanket Safe Harbor?

Picking up on HHS' directives regarding encrypted data Ransomware, there is a much larger question of whether encrypted data is still afforded a blanket safe harbor protection from breach notification requirements under state law. Generally speaking, most states were consistent in treating data that was adequately encrypted before it was "breached" is falling within a safe harbor that did not require notification.

On July 1, 2016, Tennessee became the first state to change course on this issue by amending its breach notification statute to potentially require notification regardless of whether the data was encrypted. Under the Tennessee law, encryption is no longer a blanket safe harbor but is now one aspect to be considered in performing a risk assessment to determine whether notification is necessary.[25] One can anticipate tat this issue will evolve as well.

Is an Event Caused by Criminal Actions or Negligence?

There are two primary causes of breach events: (1) Intentional wrongdoing such as when an outside "hacker" penetrates the network and steals information or, in Texas and the Federal Fifth Circuit, when an employee intentionally accesses and takes forbidden information for his own purposes, both of which are generally considered criminal act;[26] or (2) Carelessness or negligence such as when a company insider misplaces an unencrypted USB thumb drive containing PII information.

Whether an event is considered to be an incident or a breach is determined by the nature of the event, not what caused it. Whether an event is considered to be criminal or negligence is determined by the actions that caused the event. Some incidents will be criminal but not a breach; some breaches will be negligence but not criminal. Both of the situations described above are breaches[27] though the first was caused by a criminal act and the second was a result of negligence.

Criminal actions should be reported to law enforcement. There may be situations where a negligence-based situation should be reported to law enforcement but this will be determined on a case by case basis.

What is the Difference Between Reporting, Disclosing, and Notifying?

In the world of cybersecurity incidents and data breaches, the terms "reporting," "disclosure," and "notification" are often used interchangeably which can create a significant amount of confusion. While there is no standard definition or, to the author's knowledge, right or wrong way of using them, it is important to be clear about which is which when trying to explain and understand the concepts discussed herein. Most often the terms are used in the following way and, for purposes of clarity, that is how these terms will be used throughout this article:

- *Reporting* is used to describe reporting a crime to law enforcement.
- *Disclosure* is used to describe notifying a state or federal agencies of a data breach.
- *Notification* is used to describe notifying the data subjects, that is, the individual persons whose information was compromised in a data breach.

How are Breach Notification and Unauthorized Access of Computers Laws Related?

Computer misuse and data breach are opposite sides of the same coin that are intrinsically related. In most scenarios, a company starts out being the victim of a computer misuse, whether intentionally for a criminal act, or through an act of negligence, by having its computers used in an inappropriate way. In this, it is the victim. Then, however, in the eyes of the law, public policy, and public perception, the company is transformed into into the

wrongdoer because it allowed itself to be a victim of such misuse. A good example of this can be seen in the case of Shopify, which had two rogue employees access merchant transaction records beyond their authorization and led to Shopify providing breach notifications. The Shopify situation came on the heels of a similar event with Instacart that likewise triggered breach notifications. Legally speaking, the unauthorized access of computers laws are what are intended to protect the company against such misuses. The breach notification laws are what sets forth the requirements for what the company must do after it has sustained such an attack.

CITATIONS

[14] National Institute of Standards and Technology, *Computer Security Incident Handling Guide*, http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-61r2.pdf [hereinafter, NIST Cybersecurity Framework].

[15] *See* Andrea Arias, *The NIST Cybersecurity Framework and the FTC*, Federal Trade Commission (Aug. 31, 2016) https://www.ftc.gov/news-events/blogs/business-blog/2016/08/nist-cybersecurity-framework-ftc.

[16] NIST Cybersecurity Framework p.6.

[17] United States Department of Justice, *DOJ Instruction: Incident Response Procedures for Data Breaches* at 5 (approved Aug. 6, 2013) https://www.justice.gov/sites/default/files/opcl/docs/breach-procedures.pdf.

[18] United States Department of Justice, *DOJ Instruction: Incident Response Procedures for Data Breaches* at 4 (approved Aug. 6, 2013) https://www.justice.gov/sites/default/files/opcl/docs/breach-procedures.pdf.

[19] There are exceptions to this, as explained elsewhere herein.

[20] *FACT SHEET; Ransomware and HIPAA*, U.S. Department of Health & Human Services p. 1 (visited Oct. 1, 2016), https://www.hhs.gov/sites/default/files/RansomwareFactSheet.pdf.

[21] *Incidents of Ransomware on the Rise*, FBI News (Apr. 29, 2016), https://www.fbi.gov/news/stories/incidents-of-ransomware-on-the-rise.

[22] *How to Interpret HHS Guidance on Ransomware as a HIPAA Breach*, Paloalto Networks (July 25, 2016), http://researchcenter.paloaltonetworks.com/2016/07/how-to-interpret-hhs-guidance-on-ransomware-as-a-hipaa-breach/.

[23] *FACT SHEET; Ransomware and HIPAA*, U.S. Department of Health & Human Services p. 1 (visited Oct. 1, 2016), https://www.hhs.gov/sites/default/files/RansomwareFactSheet.pdf.

[24] *Id.* at 5-6.

[25] David M. Brown, *Tennessee Revamps Its State Data Breach Notification Statute*, Data Privacy Monitor (Apr. 1, 2016) https://www.dataprivacymonitor.com/data-breach-notification-laws/tennessee-revamps-its-state-data-breach-notification-statute/.

[26] Cite hacking paper

[27] The law defines "breach of system security" as the "unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data." Section 521.053 of the Texas Business and Commerce Code. *See Texas' Amended Data Breach Notification Law*, Cybersecurity Business Law https://shawnetuma.com/2012/11/14/texas-amended-data-breach-notification-law/

Shawn Tuma is an attorney internationally recognized in cybersecurity, computer fraud and data privacy law, areas in which he has practiced for over two decades. Shawn helps businesses protect their information and protect themselves from their information.

He is Co-Chair of Spencer Fane's Data Privacy & Cybersecurity Practice Group where he regularly serves as cybersecurity and privacy counsel advising a wide variety of businesses ranging from small and mid-sized companies to Fortune 100 enterprises, across the United States and globally in dealing with cybersecurity, data privacy, data breach and incident response, regulatory compliance, computer fraud related legal issues, and cyber-related litigation. He is frequently sought out and hired by other lawyers and law firms to advise them when these issues arise in cases for their own clients. Click here for the full bio: https://www.spencerfane.com/attorney/shawn-tuma/ Shawn is an accomplished author with several published works on various legal-technology topics. He is a frequent speaker on business cyber risk issues such as cybersecurity, computer fraud, data privacy, and social media law. You can reach Shawn at stuma@spencerfane.com.

When Should I Refinance?

Mitchell Byrum, CFP®

There seems to be constantly swirling information on when to refinance a home mortgage. Amid the volatility and craziness of 2020 came a significant drop in mortgage rates, leading to an up-tick in home purchases and mortgage refinancing. While you may be hearing about friends and family going through the process of refinancing, you must determine if it is a good move for YOU and YOUR family.

Here are a few reasons you may want to consider refinancing:

- Cash flow: cutting the interest rate on a mortgage can reduce your monthly payment
- Debt consolidation through a cash-out refinance
- Eliminating the need to pay mortgage insurance by "walking into equity" through a higher appraisal
- Locking in a fixed interest rate for those with an adjustable rate mortgage (ARM)

When is the appropriate time to refinance?
The old rule of thumb for refinancing was the need to reduce the interest rate on the mortgage by at least 2%. My opinion is that even a 1% reduction in the interest rate should be cause for considering a refinance, but it's not always that simple.

It is important to understand the costs associated with refinancing and have a confident idea of the length of time you will spend in your home.

- **Example 1:** A 30-year, $200,000 mortgage with a 4.5% fixed interest rate would require a $1,013 monthly payment (not including mortgage insurance, homeowner's insurance, or property taxes). By refinancing to a 30-year, 3% fixed interest rate mortgage with $4,000 in closing costs, the payment would be reduced to $860 ($153 monthly difference). In this example, the mortgagee would "break-even" on their closing costs in about 27 months.
- **Example 2:** What if a new appraisal eliminated the need for mortgage insurance? If the mortgagee was paying $100 a month in mortgage insurance premiums, they would "break even" on their closing costs in about 16 months because their payment is now $253 lower than before.

Calculate your break-even point (like the examples above). If the months it takes to recoup the refinancing costs are well within the amount of time you plan to spend in the home, it probably is worth considering.

Be aware of the costs
Refinancing is a wonderful tool in the homeowner's toolbelt. However, it comes at a cost and, unfortunately, those costs are not always clear and simple. Typical closing costs include:

- Application fee
- Appraisal fee
- Credit report fee
- Attorney/legal fees
- Loan origination fee
- Survey costs
- Taxes
- Title search
- Title insurance

It is also important to understand the difference between points and credits. These present tradeoffs in the way a mortgage is paid. Generally, the more points are paid at closing, the lower the interest rate on the loan. Adversely, if the lender gives credits towards closing costs, a higher interest rate should be expected. When shopping and comparing lenders, requesting quotes with no points and no credits will typically be the best way to compare apples and apples between lenders.

Other reasons to consider refinancing
There are a few less common, but valid reasons to consider a mortgage refinance. For individuals and families with a steady income, a cash-out refinance may be worth considering for debt consolidation purposes. Many times, the interest rate you will pay on a mortgage is less than the interest rate on other kinds of debt and, if the interest rate on other debt is variable, the fixed rate of a mortgage could be advantageous. Additionally, the interest paid on a mortgage is generally tax-deductible, which may become more of an advantage if standard-deductions are lowered back to pre-2018 levels. A cash-out refinancing typically means you are borrowing a max of 75% - 85% of the appraised value of the property, so for relatively new homeowners, this may not be an option.

Most lenders require mortgage insurance for loans above 80% of the property value.

For homeowners paying mortgage insurance who feel that the value of their property has appreciated in the time they owned it, a new appraisal may be an opportunity to eliminate mortgage insurance payments.

- **Example 3:** If a $200,000 property is purchased with a $190,000 mortgage, that means the owner has 5% equity in that property. That homeowner will have to pay mortgage insurance on that loan until they reach 20% equity, or the mortgage principal is paid down to $160,000. For illustration purposes, assume that after two years, this property owner has paid their mortgage principal down to $175,000 (12.5% equity), but believes the value of their home has gone up in that time. If a new appraisal finds that the home is now worth $218,750 or more, they will most likely eliminate the need for mortgage insurance when refinancing because they now have at least 20% equity in the property.

This can be a powerful savings tool when combined with a potential reduction in the mortgage payment itself, as seen in example 2.

When is refinancing a bad idea?

I do not believe that refinancing a mortgage for the sole purpose of reducing the term from 30 years to 15 is valid. If the interest rate reduction is simply too good to pass up, sure, that may be a different story. However, the flexibility that is retained with a 30-year mortgage and the lower payment it offers reduces the risk of not being able to make that payment in an emergency. If you are looking to pay off your mortgage faster, you can always make extra principal payments along the way to reduce the term of the loan.

Alternatively, dramatically increasing the length of your loan to lower your payment is probably not wise either. Going from a 15 or even 20-year term to a 30-year term could dramatically increase the amount of total interest paid over the life of the loan.

There is also risk involved in cash-out refinancing. Your mortgage is secured by a lien on your home, so if you cannot make the mortgage payments, the lender can foreclose on the property and sell it to pay the mortgage. While a cash-out refinance to consolidate debt may make a lot of sense on paper, it could present too much risk if the homeowner is not fully confident in their ability to pay this new mortgage payment over the length of the loan.

Lastly, if you are not confident that you will own the home longer than the time it will take you to recoup the cost of the refinance, avoid the hassle altogether! The time you will avoid spending on gathering all the documents needed for refinancing will be better spent with friends or family.

If you have any questions or would like to hear more about our second opinion offering, please don't hesitate to reach out to me at mitchell@sharrisfinancial.com.

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The 36th Emergency Order— A Game Changer

It was on March 15, 2020, when the First Emergency Order Regarding The Covid-19 State of Disaster was issued by Governor Abbott when he declared a state of disaster in all 254 counties in the State of Texas. Here is the 36th Emergency Order that has now ordered that only certain court proceedings will be held remotely. If you have not joined the mailing list for the Office of Court Administration's monthly newsletter (https://www.txcourts.gov/publications-training/publications/courtex/) or follow the OCA on Twitter (@TxCourts), you are missing out on a couple of great resources.

The 36th Emergency Order replaces Emergency Order 33 and permits courts to modify or suspend deadlines and procedures through 6/1; encourages courts to continue to use reasonable efforts to hold proceedings remotely; permits all courts to hold in-person proceedings, including jury trials, after certain actions, including adoption of minimum standard health protocols and an in-person schedule; permits courts to hold virtual jury proceedings in certain cases with technology provided to certain prospective jurors; extends the possession and access to a child provisions from previous orders; extends the ability for an attorney professional disciplinary or disability proceeding to conduct proceedings remotely.

IN THE SUPREME COURT OF TEXAS
Misc. Docket No. 21-9026
THIRTY-SIXTH EMERGENCY ORDER REGARDINGTHE COVID-19 STATE OF DISASTER

ORDERED that:

1. Governor Abbott has declared a state of disaster in all 254 counties in the State of Texas in response to the imminent threat of the COVID-19 pandemic. This Order is issued pursuantto Section 22.0035(b) of the Texas Government Code.
2. The Thirty-Third Emergency Order (Misc. Dkt. No. 21-9004) is renewed asamended.
3. Subject only to constitutional limitations, all courts in Texas may in any case, civilor criminal—and must to avoid risk to court staff, parties, attorneys, jurors, and the public— without a participant's consent:
   a. except as provided in paragraph (b), modify or suspend any and all deadlines and procedures, whether prescribed by statute, rule, or order, for a stated period ending no later than June 1, 2021;
   b. in all proceedings under Subtitle E, Title 5 of the Family Code:
      (i) extend the initial dismissal date as calculated under Section 263.401(a) only as provided by Section 263.401(b) or (b-1);
      (ii) for any case previously retained on the court's docket pursuant to Section 263.401(b) or (b-1), or for any case whose dismissal date was previously modified under an Emergency Order of this Court related to COVID-19, extend thedismissal for an additional period not to exceed 180 days from the date of this Order;
   c. except as this Order provides otherwise, allow or require anyone involved in any hearing, deposition, or other proceeding of any kind—including but not limited to aparty, attorney, witness, court reporter, grand juror, or petit juror—to participate remotely,such as by teleconferencing, videoconferencing, or other means;
   d. consider as evidence sworn statements made out of court or sworn testimony given remotely, out of court, such as by teleconferencing, videoconferencing, or other means;
   e. conduct proceedings away from the court's usual location with reasonable notice and access to the participants and the public;
   f. require every participant in a proceeding to alert the court if the participanthas, or knows of another participant who has: (i) COVID-19 or a fever, chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, sore throat, loss of taste or smell, congestion or runny nose, nausea or vomiting, or diarrhea; or (ii) recently been in close contact with a person who is confirmed to have COVID-19 or exhibiting the symptoms described above;
   g. take any other reasonable action to avoid exposing court proceedings to thethreat of COVID-19, including requiring compliance with social distancing protocols andface coverings worn over the nose and mouth.
4. Courts should continue to use reasonable efforts to conduct proceedings remotely.
5. Upon request and good cause shown by a court participant other than a juror— including but not limited to a party, an attorney, a witness, or a court reporter—a court must permitthe participant to participate remotely in any proceeding, subject to constitutional limitations.
6. A court of appeals may conduct in-person proceedings if the chief justice of the court of appeals adopts minimum standard health protocols for court participants and the public attending court proceedings that will be employed in the courtroom and in public areas of the courtbuilding.
7. A district court, statutory or constitutional county court, statutory probate court, justice court, or municipal court may conduct in-person proceedings, including both jury and non-jury proceedings, if the local administrative district judge or presiding judge of a municipal court,as applicable, adopts, in consultation with the judges in the

county or municipal court buildings:
   a. minimum standard health protocols for court proceedings and the public attending court proceedings that will be employed in all courtrooms and throughout all public areas of the court buildings, including masking, social distancing, or both; and
   b. an in-person proceeding schedule for all judges in the county or municipal court buildings, as applicable.
8. A court may conduct an in-person jury proceeding if:
   a. to assist with coordination of local resources and to manage capacity issues, the court has obtained prior approval, including a prior approved schedule, for the jury proceeding from the local administrative district judge or presiding judge of the municipal courts, as applicable;
   b. the court has considered on the record any objection or motion related to proceeding with the jury proceeding at least seven days before the jury proceeding or as soon as practicable if the objection or motion is made or filed within seven days of the juryproceeding;
   c. the court has established communication protocols to ensure that no courtparticipants have tested positive for COVID-19 within the previous 10 days, have had symptoms of COVID-19 within the previous 10 days, or have had recent known exposure to COVID-19 within the previous 14 days;
   d. the court has included with the jury summons information on the precautions that have been taken to protect the health and safety of prospective jurors anda COVID-19 questionnaire to be submitted in advance of the jury selection that elicits fromprospective jurors information about their exposure or particular vulnerability to COVID-19; and
   e. the court has excused or rescheduled prospective jurors who provideinformation confirming their COVID-19 infection or exposure, or their particular vulnerability to COVID-19 and request to be excused or rescheduled.
9. In criminal cases where confinement in jail or prison is a potential punishment, remote jury proceedings must not be conducted without appropriate waivers and consent obtainedon the record from the defendant and prosecutor. In all other cases, remote jury proceedings mustnot be conducted unless the court has complied with paragraph 8(b).
10. Except for non-binding proceedings, a court may not permit or require a petit jurorto appear remotely unless the court ensures that all potential and selected petit jurors have access to technology to participate remotely.
11. The Office of Court Administration should issue, and update from time to time, best practices to assist courts with safely and effectively conducting in-person and remote court proceedings under this Order.
12. In determining a person's right to possession of and access to a child under a court-ordered possession schedule in a Suit Affecting the Parent-Child Relationship, the existing trial court order shall control in all instances. Possession of and access to a child shall not be affected by any shelter-in-place order or other order restricting movement issued by a governmental entitythat arises from the pandemic. The original published school schedule shall also control, and possession and access shall not be affected by the school's closure that arises from the pandemic.Nothing herein prevents parties from altering a possession schedule by agreement if allowed by their court order(s), or courts from modifying their orders on an emergency basis or otherwise.
13. An evidentiary panel in an attorney professional disciplinary or disability proceeding may—and must to avoid risk to panel members, parties, attorneys, and the public— without a participant's consent:
   a. conduct the proceeding remotely, such as by teleconferencing, videoconferencing, or other means;
   b. allow or require anyone involved in the proceeding—including but not limited to a party, attorney, witness, court reporter—to participate remotely, such as by teleconferencing, videoconferencing, or other means; and
   c. consider as evidence sworn statements or sworn testimony given remotely,such as by teleconferencing, videoconferencing, or other means.
14. This Order is effective immediately and expires June 1, 2021, except as otherwisestated herein, unless extended by the Chief Justice of the Supreme Court.
15. The Clerk of the Supreme Court is directed to:
   a. post a copy of this Order on www.txcourts.gov;
   b. file a copy of this Order with the Secretary of State; and
   c. send a copy of this Order to the Governor, the Attorney General, and eachmember of the Legislature.
16. The State Bar of Texas is directed to take all reasonable steps to notify members ofthe Texas bar of this Order.

Dated: March 5, 2021

JUSTICE BOYD, JUSTICE DEVINE, and JUSTICE BLACKLOCK dissent.

Nathan L. Hecht, Chief Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

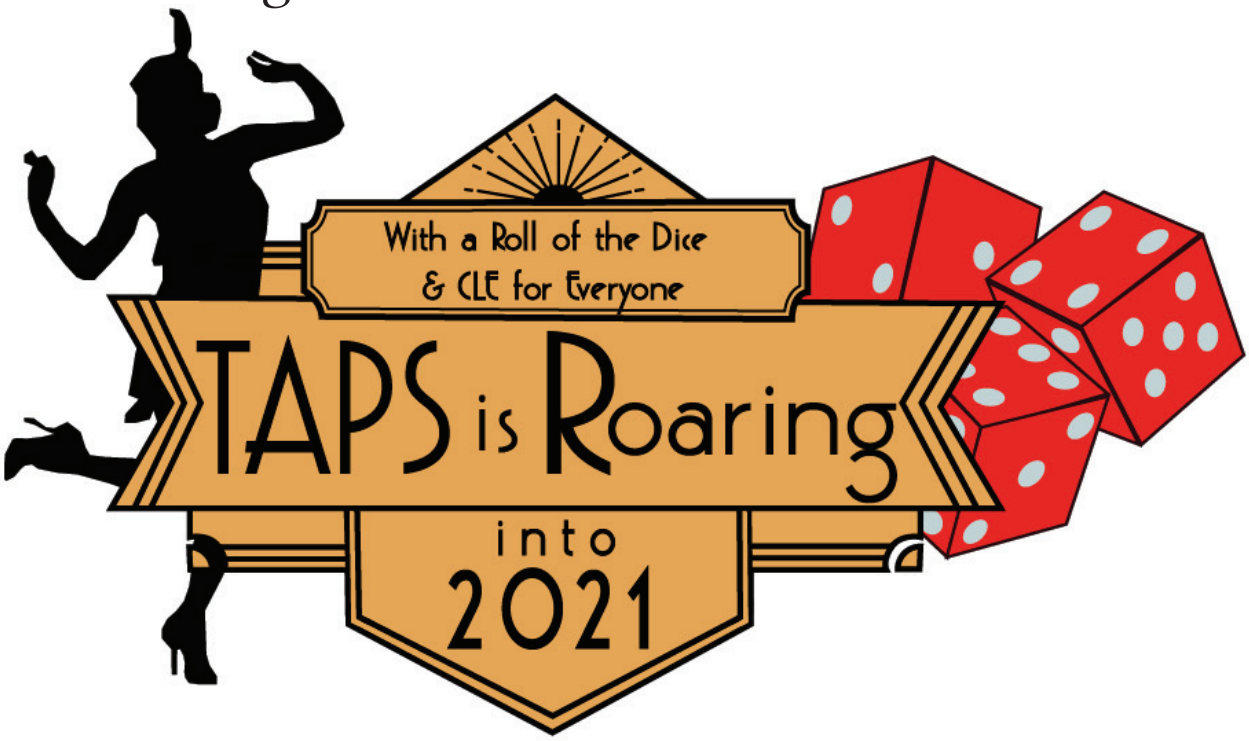
J. Brett Busby, Justice

Jane N. Bland, Justice

Rebecca A. Huddle, Justice

Texas Advanced Paralegal Seminar
September 22-24, 2021

The Paralegal Division is excited to announce -



3-day CLE event

LIVE in San Antonio, Texas

We cannot wait to see you! Come celebrate the Paralegal Division's 40th Anniversary with us!

www.txpd.org/TAPS

PARALEGAL DIVISION ANNOUNCES TAPS 2021 SCHOLARSHIP

For the upcoming 2021 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 2021 seminar, "With a Roll of the Dice and CLE for Everyone TAPS is Rolling Into 2021." 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: **"During the COVID Pandemic, How Have You Managed Your Role as a Paralegal in the Workplace and the Community?"** 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 2021 which will cover the cost of registration in accordance with the TAPS scholarship guidelines.

TAPS 2021 SCHOLARSHIP APPLICATION

IMPORTANT: ALL APPLICATIONS FOR A SCHOLARSHIP FOR TAPS 2021 MUST BE RECEIVED BY MONDAY, JULY 12, 2021.
DATE OF TAPS 2021: September 22-24, 2021, San Antonio, 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 2021: _____
_____
_____
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: Susi Boss, Scholarship Chair of the TAPS Planning Committee, Higdon, Hardy & Zuflacht, LLP, 12000 Huebner Rd., Suite 200, San Antonio, TX 78230 or email to: taps@txpd.org *Scholarship recipients will be notified by letter or email by July 26, 2021 and must accept and be registered for TAPS by August 10, 2021.*

_____ _____
Date Applicant's Signature (**Attach any additional explanations.**)

BOARD OF DIRECTORS QUARTERLY BOARD MEETING SUMMARY WINTER 2021

Submitted by President-Elect, Susi Boss
President-elect@txpd.org

The Board of Directors met via Zoom and in person Friday, February 26, 2021 and Saturday, February 27, 2021 across the state and live in Dallas, Texas. A hybrid meeting that worked (with a few glitches).

All annual reports were presented from the from the Directors, Liaisons, Historian, Standing Committees.

Discussion on the President-Eelect and the announcement will be in the upcoming TPJ.

The Odd-Number Director Elections for Districts 1, 3,5, 7, 11 and 15; and a special election for District 12, will be voted on in March – don't forget to make sure you get your ballot in.

TAPS 2021 and the Annual Meeting – We are planning on a live event in San Antonio, TX. The Annual Meeting is on Friday the last event of the TAPS Conference. Save the dates for September 22 through 24, 2021.

Membership – it's time to get your CLE together and look for your reminder to renew in the mail. Don't wait until the last minute and remind your fellow paralegals as well.

Your Board of Directors and Committees are working hard for all of our members especially during these trying times. Please let us know what we can do for you.

VOLUNTEER at your District level or the state level - if you are interested in learning about becoming more involved with the PD there is always room for one more on a committee, a District level sub-chair or as a volunteer. Please feel free to contact your local District Director or me (President-Elect@txpd.org

TAPS 2021 – San Antonio, TX, September 22 through 24, 2021
Open your E-Pulse and TPJ to find out more about TAPS and all the events and timelines for registration, scholarship deadlines and much, much more starting this month.

40TH ANNIVERSARY - The 40th Anniversary for PD is just around the corner and plans are already being made so look for more information in the coming months. This is going to make a great story over the next few months so stay tuned for the history and photos of 40 years of PD.

IMPORTANT INFO FOR THE YEAR –

1. **Keep your CLE forms** – It is your responsibility to keep up with your CLE and **remember everyone is in on the drawing for a SPOT AUDIT!**
2. **ONLINE STORE** - Support the PD by shopping on the Online Store
3. **MEMBERSHIP** – Don't forget to renew and encourage your fellow paralegals (across the state) to join. How many paralegals can you invite and encourage to join?
4. **SHARE** – Share experiences of dealing with our challenges and successes in dealing with COVID and meetings, CLE events, etc.
5. **READ – Open and read** the Paralegal Pulse and TPJ. Check out what's happening in your District and across the state each month. Great ideas, great free CLE.
6. **WEBSITE** - How do you like the new face of the PD and our website? Check it out with new areas to look into; let us know what you think.

IMPORTANT NOTICE

TIME TO RENEW YOUR PARALEGAL DIVISION MEMBERSHIP
MAY 1, 2021 – JULY 31, 2021

THIS IS THE ONLY MAILED NOTICE YOU WILL RECEIVE

The Paralegal Division membership renewal process will be entirely online. Beginning on May 1, 2021, online renewals will be available. Visit www.txpd.org under the "Members Only" tab to complete your renewal. A late fee of $25.00 will apply to renewals submitted after July 1, 2021.

Renewing Active and Associate members are required to complete six (6) hours of substantive CLE, **at least one (1) hour of which must be legal ethics** , prior to May 31 to renew membership. Active and Associate renewal applicants must document required CLE ***PRIOR TO*** completing the membership renewal application on the website. You may enter your CLE by accessing the page found on the PD website at www.txpd.org (Go to ***Login to My Account>Membership Links>Manage My CLE Records***). Go online and enter your CLE today! **KEEP COPIES OF YOUR CLE CERTIFICATES FOR 2 YEARS IN THE EVENT OF A CLE AUDIT.**

Please renew online beginning May 1, 2021.

Thank you! Paralegal Division www.txpd.org

PARALEGALS GO TO Bratislava and Budapest

April 15 – April 23, 2022

(Eight Days and Seven Nights)

FRI, April 15, 2022 -- Depart from the USA to Vienna.

SAT, April 16, 2022 (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 17, 2022 (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 18, 2022 (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)

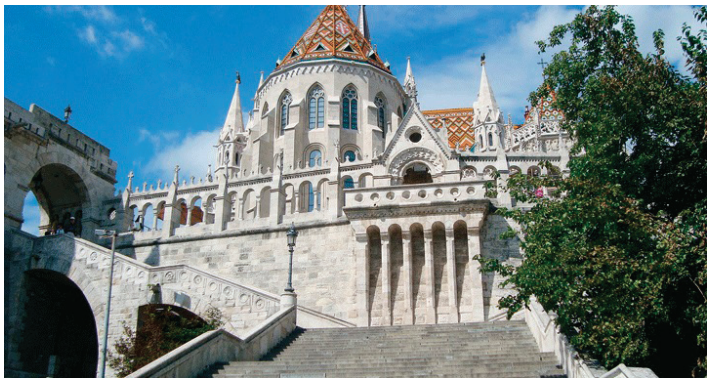
TUE, April 19, 2022 (Budapest) – Depart Slovakia this morning and continue your journey to Hungary. Today's destination is Budapest, also known as the Pearl of the Danube. This evening enjoy a cruise on the Danube. (B,D)

WED, April 20, 2022 (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 21, 2022 (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 22, 2022 (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 23, 2022 - Depart for the USA. (B)



FEE WITH AIR INCLUDED: Fee is based on registration by December 1, 2021.

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,** 2021; Initial non-refundable deposit is $200; second payment of $1,000 is due October 1, 2021; third payment of $1,000 is due on November 1, 2021, with balance due on December 1, 2021. **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.

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.

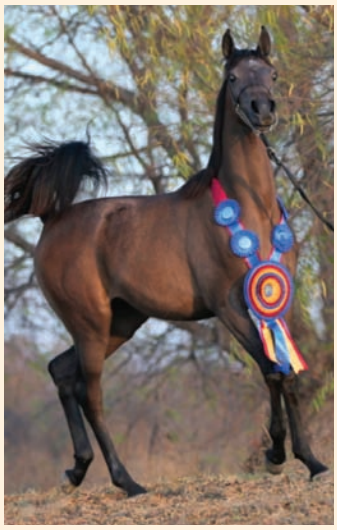
REGISTER at http://www.acis.com/register choose **Participant** from the drop-down menu and sign in using: **Group Leader ID: 46775- Group Leader's Last Name: Brashears** - Click on the appropriate circle for your departure city for the **"Bratislava/Budapest Trip"** trip and fill in your information.

ET al

2021–2022 PRESIDENT-ELECT
LISA PITTMAN
DENTON, TEXAS (DISTRICT 12)

In February, 2021, the Board of Directors announced its election of Lisa Pittman as the 2021-2022 President-Elect of the Paralegal Division. Lisa Pittman is a paralegal with the law firm of Hayes, Berry, White, & Vansant, LLP. She has worked with partner, Richard Hayes, for over twenty years. Lisa has extensive experience in residential and commercial real estate, oil & gas, transnational, eminent domain, and civil litigation.

Lisa is the current Director of District 12, as well as the Paralegal Division's Secretary. Lisa served the State Bar Paralegal Division as chair of the Public Relations Committee and Mentor/Protégé Committee from 2009-2012; as subchair for the Public Relations Committee from 2007-2008; and as a TAPS on-site volunteer for eleven years. Lisa is a member of the Denton County Paralegal Association and has served DCPA in a variety of roles over the years: as Secretary/Parliamentarian in 2006, 2007, 2008 & 2011; and as Treasurer from 2009 to the present. She served as Committee Chair for the Legal Directory Committee, Bylaws Ad Hoc Committee, and Newsletter Committee.



Lisa and husband, Todd, have two adult children, Shaun & Natasha, three beautiful granddaughters, Nevaeh, Savannah & Kelci, one rambunctious grandson, Kason. In her spare time, Lisa also enjoys spending time with her family, road trips with her husband on their Harley Davidson, reading, sewing, and crocheting. Lisa, her husband and daughter breed, raise and show their purebred Arabian horses.

Paralegal Pride Across the State

PARALEGAL DIVISION ANNUAL MEETING AWARD RECIPIENTS

Special Appreciation Award
Deb Pointer
Taylor Olson Adkins Sralla & Elam, LLP
Fort Worth, Texas
For outstanding work as the Member Renewal Spot Audit Committee Chair. Deb Pointer is a two-time recipient of the Paralegal Division's Outstanding Committee Chair Award. It is because of her continued efforts as this Chair that she was selected for the Special Appreciation Award. Deb has always showed deference and worked dutifully and diligently during her terms as the Spot Audit Chair. The "Keep Your CLE Certificates" campaign was launched with her help to remind members that we represent the entire membership through prepared compliance of the spot audit.

Outstanding Committee Chair Award
Erica Anderson, ACP
Mullin Howard & Brown
Amarillo, Texas
For outstanding work as Public Relations Committee Chair (2019-2020). Erica has been not only served as Public Relations Chair, but has been involved in many roles for the Paralegal Division, including her creative leadership as Past President.

Margie Putman, CP, NCPM
Putman Paralegal Firm, LLC
Sugarland, Texas
For outstanding work as Online CLE Committee Chair (2019-2020). Margie jumped in to fill Online CLE Committee Chair position and was very diligent in making sure the webinars were being offered and made a very streamlined process for not only the speakers, but the sub-chairs and directors.

RECOGNITIONS ACROSS THE STATE

District 2

In 2020, we saw many things change in the legal field because of COVID-19, but that did not stop some great paralegals in continuing to lead by example, through service and leadership.

District 2 is proud to recognize and congratulate a few of these distinguished individuals:

Paralegal Division (PD) members Debbi Lowe has been elected as President-Elect for 2021 with the Dallas Area Paralegal Association (DAPA).

Debbi is a litigation paralegal with over 25 years of experience in the legal field. She has worked in Commercial Litigation, Intellectual Property, Labor and Employment Litigation, Trademark Prosecution, Securities, Personal Injury, Toxic Torts, Medicare Administration and Appellate cases.

Debbi joined the Dallas Area Paralegal Association as a student member in 1998. She became an active member in 2003. In 2010, Debbi served as Job Bank Administrator until the summer of 2011. She served as Job Bank Administrator from 2010-2011. She served on DAPA's Board of Directors as Communications Director and the Weekly Communications Manager from 2011 to 2020. Debbi also served as

Newsletter Editor from 2015 to 2020. She serves as a Mentor in DAPA's Wendi A. Rogers Mentor/Protégé Program. Debbi is currently serving on DAPA's Board of Directors as President-Elect.

Debbi is an active member of the Paralegal Division of the State Bar of Texas in which she served as the Public Relations Committee Sub Chair since 20018. Debbi is the recipient of DAPA's President's Award in 2012 and the Paralegal of the Year Award in 2016. Debbi obtained her Associate's Degree in Paralegal Studies from El Centro College and graduated with a Bachelor's Degree from the University of North Texas.

Debbi is a supporter of the Texas SPCA, Operation Kindness, and the North Texas Food Bank. Debbi spends her free time gardening, reading, listening to music, and dining with friends (Pre-Covid).

Lindy Duffney, who has been elected as the Communication Director for 2021 Lindy has provided detailed legal support as a paralegal since November 2019 by working through complex litigation and transactional cases from beginning to end. Lindy was first introduced to DAPA by attending the Wendi Atwood Rogers Mentorship Workshop where she first felt inspired to pursue a career as a paralegal.

Lisa Lynch, CRP, CED has been elected to President-Elect in 2022 with National Federation Paralegal Association. The President-Elect works closely with the President and learns the roles and responsibilities to ensure continuity. At the end of this 2-year term, the President-elect shall become President and serve for one two-year term. The President-Elect will become President at the NFPA 2022 Convention.

Lisa currently works as an in-house paralegal for a global leader in the commercial and multifamily real estate industry in Dallas, Texas. Her role focuses on litigation, eDiscovery and corporate governance. Since 2015, Lisa has served on the NFPA's Board of Directors in different capacities - Vice President and Director of Marketing (2015) and Region II Director (2019).

Lisa has been involved with the Dallas Area Paralegal Association (DAPA) since 2004. She served as DAPA's President in 2014 and held other positions including President Elect, NFPA Primary, NFPA Secondary, Vendor Advisor, as well as serving on many committees. She has also been a CLE speaker at many DAPA and student events. In 2014, Lisa was presented with the DAPA Paralegal of the Year Award. She is also a member of Paralegal Division of the State Bar of Texas and sat on the El Centro Paralegal Advisory Board.

Lisa participates in DAPA's mentor/protégé program and is a volunteer with the Dallas Volunteer Attorney Program and other community service programs benefiting non-profits such as the North Texas Food Bank, Juliette Fowler, TangoTab and The Stewpot.

CONGRATULATIONS to these individuals who are taking leadership to another level!

District 3

2019-2020 State Bar Year Awards – Pro Bono Support Staff Award - Julie Sherman, TBLS-BCP, of Cantey Hanger in Fort Worth. This award recognizes the outstanding and exemplary contributions of non-attorney volunteers who work on pro bono projects. Julie was awarded this prestigious award for her tireless efforts and contributions to the Tarrant County Volunteer Services ("TVAS"), a community service committee under the Tarrant County Bar Foundation.

2020 Fort Worth Paralegal Association – Fort Worth Pro Bono Volunteer Award - Susan Davis, TBLS-BCP, of the Law Offices of Jason Smith, in Fort Worth. Susan Davis is also the recipient of the 2020 Paralegal Division Exceptional Pro Bono Award. (See Winter *TPJ* edition.)

District 4

CAPA Paralegal of the Year for 2020, Nicole Cloutier, ACP TBLS-BCP. Nicole is employed with the Texas Office of the Attorney General Criminal Prosecutions Division. She has the following certifications: ACP-Criminal Litigation, CP/CLA, and TBLS-Criminal. Congratulations!

Other Happenings Around the State:

District 5 of Food Bank Collection
The Food Bank Christmas Collection took place in November and the Food Bank barrels were placed in various law firms. District 5 hopes to make it an annual event. There were actually two barrels at each location, one for food for the Food Bank and the second was for pet food to be distributed through the Food Bank as well.

68th Red Mass at San Fernando Cathedral
Red Mass: The photographs attached capture a unique moment in the 68 years of Red Mass history in San Antonio with limited representation from all areas of the legal community in person but also held virtually, including St. Mary's Law School Dean, and professors as well as students; our judicial community; attorneys, judicial staff, Court Reporters and of course our great Paralegals. District 5 PD and SAPA were represented. This remarkable and spiritual gathering of all faiths for the blessing of our legal community is overwhelming. If any other District would like more information and to find the local Red Mass in various areas, please feel free to contact district5@txpd.org.

PARALEGAL DIVISION ONLINE STORE

Visit the PD online store today!

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

ASSOCIATE MEMBERSHIP

Join forces with an elite group of lawyers and paralegals who lead our profession. Through associate member status, the College honors paralegals that make a commitment to maintain and enhance their professional skills through attending an extraordinary amount of continuing legal education hours.

REQUIREMENTS

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

(1) completing twelve hours of accredited CLE in the previous OR current calendar year which must include two hours of ethics,

(2) paying the required fee,

(3) submitting an application form on which a licensed Texas attorney verifies the applicant's good character and qualifications as a paralegal, and

(4) submitting a report identifying the sponsor of the CLE programs attended, the specific topics included, the names and firms of speakers on the programs.

Two of the twelve hours including one hour of ethics may be earned through self-study.

BENEFITS

- A certificate of membership suitable for framing and a leather portfolio with the College logo
- The distinction of attaining a higher level of professional membership
- Unlimited access to TexasBarCLE's Online Library, a searchable database of over 27,000 CLE articles, forms, and case law updates
- Discounts for many live and video replay courses through TexasBarCLE, the State Bar's award-winning CLE department
- Use of the College logo on business cards, websites, letterhead, email signatures, etc.

To join, visit texasbarcollege.com.

TEXAS BAR COLLEGE

PROFESSIONALISM THROUGH EDUCATION