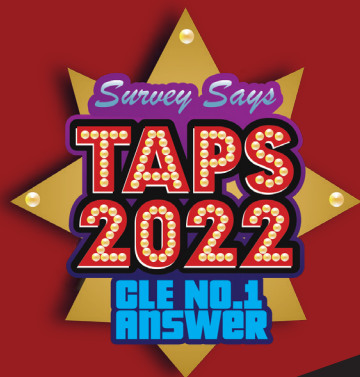


*Texas Paralegal Journal*

# TPJ

# TEXAS ADVANCED PARALEGAL SEMINAR



SUMMER 2022  
NO.1 | VOL. 28



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Lisa Pittman

## President's **MESSAGE**

I am very humbled and grateful for the opportunity to serve as your President for the next year.

The past few years since the COVID-19 pandemic have been challenging and we have had to adapt to what is becoming the "new" normal for us all. We have been able to come so far because of "PERSEVERANCE". Our willingness and determination has made all the difference. As such, our organization has shown great drive and resilience during these most trying of times.

We are striving to bring more CLE opportunities to the PD members. Be sure to read the e-newsletter the *Paralegal Pulse* which is sent out monthly via e-blast for information on events, CLE, webinars, articles and other happenings in your district as well as interesting and relevant topics from all across the state. Each district has its own Facebook page you will want to check out as well for important news and announcements. The *Texas Paralegal Journal* is published quarterly and is now digital. The TPJ is a great resource for information for the PD's members that include informative articles, topics of interest and information regarding our vendors. Both the *Paralegal Pulse* and the *Texas Paralegal Journal* are always looking for articles and other hot topics from the members. If you have an article you would like to submit, please contact the editors for both. Their contact information is on the PD website.

The entire Board is here to empower our members and future members with the tools and information to assist you with advancing your career and promoting the paralegal profession as a whole and to become the leaders you are destined to be. I am always available to you, so reach out to me and let me know how we can better serve you as a member of the PD.

**Lisa Pittman**  
President

## Editor's Note

Texas Paralegal Journal  
Summer 2022



Rhonda J. Brashears

# Editor's NOTE

Greetings Paralegal Division members and Texas Paralegal Journal readers. When this issue hits your screen, we will all be involved in end of Summer-beginning of Fall events. Kids will be back in school, Fall sports will be gearing up, and those on the TAPS Planning Committee will be putting the final details on TAPS 2022, which will take place September 28-30, 2022 in Fort Worth. The full brochure is a part of this edition. If you have never attended TAPS it is a wonderful event full of CLE, fun and networking. I encourage you to attend. If you are a TAPS follower, the planning committee has another great event lined up for you!

All of this to say that life is always changing. One of those changes this year is that our longtime TPJ Editor, Megan Goor-Peters has decided to put away her "pen" and has stepped down from her post as the Editor and Chair. I wanted to take the opportunity to say a bit about what Megan has accomplished as the Chair of this

committee over the years. Megan has been an integral part of the wonderful changes that you now see in your magazine. It is fully digitized and has a slick professional face that any association would be proud to have as a part of their member benefit package. Compiling and planning for each issue is a big task each quarter and Megan has done a wonderful job! Megan had a vision for a bold new magazine that our members would enjoy reading and she accomplished it. Thank you, Megan, for your vision, your dedication and your hard work for the PD members!

If you are interested in volunteering with the Publications Committee, we are always looking for folks to collect, write and review articles and content to get this magazine to our readers four times a year. We love our volunteers so please contact us at [pd@txpd.org](mailto:pd@txpd.org).

**Rhonda J. Brashears,**  
CP, TBLS-BCP



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Rhonda J. Brashears, CP, TBLS-BCP, Interim Editor  
Rhonda J. Brashears, CP, TBLS-BCP, Coordinator  
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**Deadline for the Fall Issue is September 5, 2022.**  
E-mail [tpj@txpd.org](mailto:tpj@txpd.org).

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APR 14-22, 2023

Group Leader  
Rhonda Brashears

Group Leader ID  
46775

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- 🍷 Wine Tasting
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### DAY 2, APR 15, 2023: LOIRE VALLEY

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### DAY 3, APR 16, 2023: LOIRE VALLEY

Today, visit the chateaux of Blois as well as Chenonceau, the château of six women, built over the River Cher in an exquisite Renaissance design. It features a moat, drawbridge, towers and turrets—and great stories about resistance to the Nazi army. Enjoy a wine tasting while in the Loire. (B)

### DAY 4, APR 17, 2023: LOIRE VALLEY

Your day begins with a visit of the town of Amboise as well as the chateau. You'll also enjoy a visit to Clos Luce, a fortified palace turned Renaissance manor where, at the invitation of Francis I, Leonardo lived, created, and died. Marvel at the display of many of his inventions brought to life as working models. Legend maintains that Clos Luce was linked by an underground tunnel to the nearby Château of Amboise so that Francis I could visit Leonardo when the King resided at Amboise. (B,D)

### DAY 5, APR 18, 2023: PARIS

Depart for Chartres to view the famed Gothic Chartres Cathedral, its stained-glass windows and veil of the Virgin Mary, before traveling on to Paris this afternoon. (B)

### DAY 6, APR 19, 2023: PARIS

Your day begins with a guided sightseeing tour that takes you past some of the most famous attractions in Paris. Your expert local guide will show you the splendid Seine, Napoleon's final resting place at Les Invalides and the Gothic wonder of Notre Dame. Free afternoon. (B)

### DAY 7, APR 20, 2023: PARIS

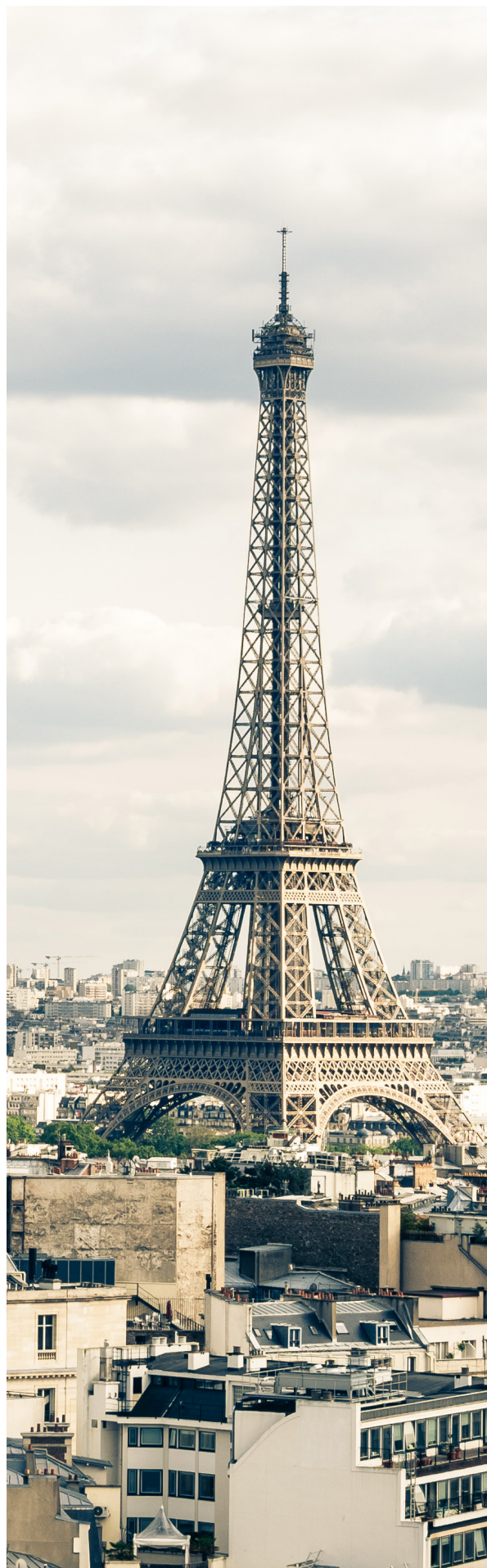
Guided tour of the Paris Opera House. Free afternoon before Farewell Seine River dinner cruise. (B,D)

### DAY 8, APR 21, 2023: PARIS

Free day to explore on your own. (B)

### DAY 9, APR 22, 2023: DEPARTURE

Transfer to the airport for return flight to the United States. (B)



# THE ROLE OF THE PARALEGAL IN PRESENTING PROPERLY PREPARED CORPORATE REPRESENTATIVE WITNESSES



One of the least understood parts of litigation discovery centers around the deposition testimony of corporate witness representatives. Oftentimes, neither side understands the importance of these witnesses in making or breaking your client's case. These are not "throw away" depositions or something that either side can successfully complete without significant preparation and understanding of the applicable rules. Presenting counsel must make sure these witnesses are properly prepared to meet both their obligations under the rules of civil procedure as well as their own ethical obligations to their client.

In federal court, corporate depositions are governed by Federal Rule of Civil Procedure 30(b)(6) (frequently referred to as a "30(b)(6) deposition").

When a corporate representative is appointed to testify on behalf of a company, they are typically provided a deposition notice which identifies the subjects he or she will be asked to address in their testimony. These lists of subjects provide great insight into the upcoming deposition and opposing counsel's theories of the case. They certainly provide a roadmap for the paralegal to use as a beginning point for assisting in preparing their attorney and client.

Preparing for a 30(b)(6) deposition can be overwhelming and time-consuming. Often, the imprecise identification of subjects in the notice leaves the corporation wondering what the noticing party really seeks to explore or even who is the best individual to testify to the topics identified. The large number of listed

topics can similarly be overwhelming and require the early identification of multiple witnesses that might be needed to comply. The federal judiciary has observed that corporate representative(s) under the current practice are often unprepared to provide the necessary testimony and/or that the entity's interpretation of the deposition topics does not match the intent of the noticing party. The result is aborted or suspended depositions, extended litigation, and increased costs. Effective use of good paralegals can make this process much smoother for the witness.

The technical nature of these depositions provide a great opportunity for litigation paralegals to add value to a case. The litigation paralegal will need to read and understand the topics included in the corporate representative notice to begin pulling together all of the documents and other evidence that relate to each topic. Organizing the file(s) into manageable and well-organized pieces allows your attorney and the designated witnesses to prepare for the deposition in an efficient and effective manner. This process also allows a paralegal to analyze the specificity of the requests to assist in identifying whether the notice is proper.

Corporate representative depositions are different than depositions of fact witnesses. Fact witnesses testify based on their personal knowledge. The testimony of a corporate representative witness represents the *collective* knowledge of the corporation, and not (necessarily) the personal knowledge of the specific individual witness. A corporation therefor has an affirmative duty to produce a witness who can provide binding answers on behalf of the corporation. The corporate representative witness will often testify to matters outside of the individual's personal knowledge. Although the rule is not designed to be a memory contest, the entity must make a good faith, conscientious effort to designate appropriate persons and to properly prepare them to testify fully and non-evasively about the designated subjects. This is why it becomes so important for the litigation paralegal to understand the requested topics and organize the available evidence in a manner to help witness preparation. This exercise must begin early in the process so the paralegal can also identify documents or categories of documents that might not yet have been produced by the client.

Corporate representative depositions were created to protect the entity being deposed, but they also keep the business from playing their own games. Federal Rule 30(b)(6) exists to avoid the gamesmanship of corporations using multiple individual officers or employees to disclaim personal knowledge of facts clearly known to the corporation as an entity. An organization has the duty to perform a diligent search on the subject-matters encompassed by the deposition notice and to perform

a "reasonable inquiry" as to those topics. This "reasonable inquiry" is a significant undertaking with measurable consequences for failing to meet the party's legal burden. If an organization fails to perform a diligent search and presents a witness that is not prepared, then it is the equivalent of not producing a witness at all. Attorneys working with their paralegals must ensure their clients undertake this investigation prior to designating and producing corporate representative witnesses. Without a paralegal taking charge of this process, information is missed and the client runs the risk of not complying with the Rules.

**The definition of what is a "reasonable inquiry" by a client is broad. The organization, guided by their counsel and her paralegal, should generally, at a minimum:**

1. review relevant documents within its possession, custody, or control (as well as information reasonably available from non-parties, vendors, subsidiaries, or affiliates);
2. interview current or past employees, officers, directors, agents, third-parties subject to the organization's control; and
3. review all written discovery produced in the underlying case, including deposition transcripts, witness statements, exhibits, and written-discovery responses.

Further, in the event that the employee with the relevant knowledge of a past event is either deceased or otherwise no longer reasonably available, the organization must still search all records and documents from that past employee to help prepare the designated representative(s). In other words, a corporation is expected

to create an appropriate witness or witnesses from information reasonably available to it if necessary. Additionally, an organization does not have to conduct formal discovery for the other side and does not have to depose uncooperative former employees or nonparties to gain additional information for these depositions.

The federal rule implicitly requires the corporation to review all matters known or reasonable available to it in preparation for a Rule 30(b)(6) deposition. The corporation must make a "good faith effort" to find out the relevant facts and to collect information, review documents and interview employees with personal knowledge. The fact that much of the factual information may only be known by former employees or vendors like accountants of the business does not relieve the corporation from preparing and providing someone competent to testify.

If a corporation genuinely cannot provide an appropriate designee because it does not have the information, cannot reasonably obtain it from other sources and still lacks sufficient knowledge after reviewing all available information, then its obligations under the Rule cease. However, this will be a significant burden to successfully present to the court and counsel must be convinced that the client has met all reasonable interpretations of "reasonable inquiry". Rarely will a party be excused from its obligations under the applicable rules. Even more rarely will this be accomplished without a top-flight paralegal working with the client to uncover each and every possible piece of information to prepare a witness.

The Texas rules are only slightly different. The Texas rules do not require the representative to have any present or past affiliation with the organization and merely requires the organization to designate “one or more individuals to testify on its behalf[.]” Tex. R. Civ. P. 199.2(b)(1). So, a former employee may be designated as the organization’s representative. Likewise, an employee of another company may sometimes be an appropriate representative. However, the designated witness(es) must still be properly prepared to address the listed topics and speak on behalf of the corporation. The obligations of the client, the attorney and the paralegal do not change.

Regardless, the often tried approach of picking a company employee and quickly reviewing a deposition notice with them will not suffice to meet the obligations under the rules. Counsel must make sure that the witness and the company have undertaken the exhaustive research necessary to present a representative to speak on behalf of the company. This is where a well-trained paralegal can earn their keep by making sure both the attorney and witness are prepared. There are significant consequences for both the attorney and client who do not meet their obligations to present competent witnesses. The goal of the corporate representative witness rules lies in streamlining discovery and cutting costs for all sides.

Gamesmanship or a lack of preparation undermine this goal and properly leave open the possibility of sanctions for noncompliant parties and their attorneys. Although attorneys regularly explain to their fact witnesses that “I don’t know” is an acceptable answer when true, it will not suffice for a corporate representative witness. These witnesses are charged with the obligation of preparing themselves so that they do not have to answer “I don’t know”. The extra time and effort required to prepare for these depositions is not only beneficial but required. Nobody is more valuable to this process than a paralegal. Understanding the obligations of our clients and attorneys makes paralegals more effective for our clients.

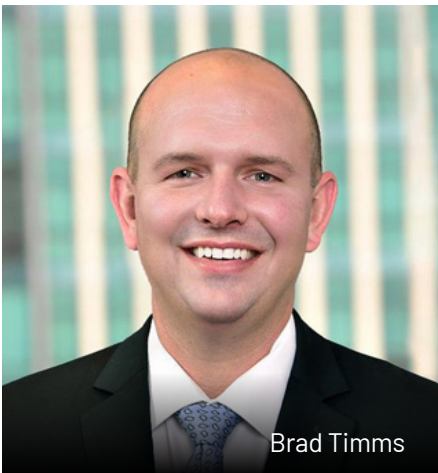




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Carol A. Wilson,  
Board Certified Family Law

# Pillow Talk Negotiations: **DRAFTING CONSIDERATIONS IN MARITAL AGREEMENTS**

Marital agreements are the only type of contract that a lawyer negotiates in which each side's respective clients are renegotiating the document every night until the document is signed.

## **I. There are three types of marital agreements in Texas – premarital agreements, postmarital agreements, non-marital cohabitation agreements – what's The difference? Chapter 4 of the Texas family code.**

### **A. Timing difference obviously**

1. Premarital Agreements are signed before the wedding and are governed by TFC §4.001-4.010.

2. Marital, Postmarital Agreements or Property Agreements Between Spouses or Partition Agreements – are signed after the wedding and before the divorce and are governed by TFC §4.102-4.206.

- i. Two types – agreements that partition or exchange community property into separate property; and agreements that convert separate property to community property.

- ii. Sometimes the agreement is signed after the wedding simply because the parties did not get it signed before the wedding.

3. Non-Marital Cohabitation Agreement is designed to prevent common law marriage claims. Common law marriage is defined in TFC §2.401.

### **B. Difference in purpose**

1. Premarital Agreements – protection of separate property assets, estate planning, taxes or pre-divorce planning.

2. Postmarital Agreements – protection of separate assets, estate planning, protecting the community asset from creditors, taxes, pre-divorce planning or pre-probate planning.
3. Non-Marital Cohabitation Agreements – prevention of common law marriage claims when one of the parties has or is about to receive valuable assets and has been in a long-term cohabitation relationship.

**C. A big difference between the types of marital agreements is that because the Texas Supreme Court holds that married couples have a fiduciary duty to one another, *Vickery v. Vickery*, 999 S.W.2d 342, 357 (Tex. 1999), a postmarital agreement should give benefits to both parties.**

1. Two Courts of Appeals have held that all transactions between a fiduciary and her principal are presumptively fraudulent. Thus, it is a spouse's burden to establish that she acted fairly and informed Husband of all material facts relating to the alleged transaction. In *Re Marriage of Green and McDaniel*, 2017 WL 3224866 (Tex. App. – Tyler 2017, no pet. h.); *Estate of Townes v. Townes*, 867 S.W.2d 414, 417 (Tex. App. – Houston [14th Dist.] 1993, writ denied).
2. This means that there is a fiduciary duty in postmarital agreements. In the *Matter of Marriage of Moore*, 890 S.W.2d 821, 827 (Tex. App. – Amarillo 1994, no writ); *Matter of Marriage of DeVine*, 869 S.W.2d

415, 428 (Tex. App. – Amarillo 1993, writ denied); Marsh v. Marsh, 949 S.W.2d 734 (Tex. App. – Houston [14th Dist.] 1997, no writ); In the Matter of the Marriage of Smith, 115 S.W.3d 126 (Tex. App. – Texarkana 2003, pet. denied).

3. Generally, the spouse fiduciary duty ends when a divorce is filed and both spouses are represented by independent counsel. Parker v. Parker, 897 S.W.2d 918, 924 (Tex. App. – Fort Worth 1995, writ denied).

4. Despite the fiduciary duty evaporating at the time parties “lawyer up” for a divorce, Courts have still held that parties have a duty to tell the truth to each other. I do not have a case stating that the duty to tell the truth applies to premarital agreements. *Boyd v. Boyd*, 67 S.W.3d 398 (Tex. App. – Fort Worth 2002, no writ); *World Help v. Leisure Lifestyles, Inc.*, 977 S.W.2d 662, 670 (Tex. App. – Fort Worth 1998, pet. denied).” See also *In Re W.L.W.*, 370 S.W.3d 799, 803 (Tex. App. – Fort Worth 2012, org. proceeding [mand. denied]).

i. In most cases there is no fiduciary duty between persons about to marry and while they are negotiating a premarital agreement. However, in *Andrews v. Andrews*, 677 S.W.2d 171, 174 (Tex. App. – Austin 1984, no writ) the Court held that a fiduciary duty may exist where the parties had a long confidential and trusting business relationship prior to entering a premarital agreement.

## II. Drafting Considerations

### A. Big picture drafting considerations

1. The first overarching consideration in drafting is to imagine that every provision will be challenged in a marriage dissolution or probate case.<sup>1</sup>
2. The second overarching consideration is to be sure both parties have their own lawyer. If one party refuses to have a lawyer, recite in the agreement the efforts the other spouse did to insist that both parties have their own lawyer.
3. I recommend you establish in the agreement that the parties are currently residents of Texas and intend Texas to be their state of residence. Otherwise, why is a Texas lawyer writing an agreement for people who are not going to reside in Texas.
4. I recommend the agreement be written to apply Texas law as it exists at the time the agreement is written. These agreements are often written years before they are used. We all know the Legislature can change the statutes and the Texas Supreme Court and Courts of Appeals can change the interpretation of the statutes. But the drafter cannot predict exactly what those future changes may be, only that there will likely be changes.
5. Does either party have children from a prior relationship whose inheritance interest the client wants to protect.

6. Do you want to prevent either spouse from creating a spectacle at the time the parties separate or divorce? Consider putting in a mutual injunction prohibiting either spouse from talking negatively about the other spouse, their family, their business, etc. on any form of social media, etc. – anywhere but, in a courtroom.
7. If you do not get the premarital agreement done before the wedding, the monied spouse loses all leverage in negotiations.
8. In a pre-marital or non-marital cohabitation agreement, state clearly that the parties agree that they are not common law married and the only way they will ever agree to be married is with a ceremonial marriage. You do not want a spouse later claiming that there was a common law marriage that preceded the signing of either type of agreement.
9. Consider keeping your file in the office safe.
10. Consider whether you should have the client sign a statement that you told them not to sign the premarital agreement. Particularly if you believe the agreement is not fair.

<sup>1</sup>We use the word “dissolution” rather than divorce because the parties may file for annulment or file for a legal separation if they are living outside the State of Texas. Dissolution of marriage covers those circumstances as well as divorce.

**B. After determining the type of marital agreement that is needed, then begin asking questions of your client that essentially ask: how does your client plan to run the household finances during the marriage? More precisely ask:**

1. Explain to your client how the law would view their property at the end of the marriage if they did not have this agreement. Then ask the client what they want different from what the law provides;
2. Does your client only want to preserve existing assets and the income and appreciation from those assets, or does the client want to preserve all of their future income and assets as well;
3. Does your client want all of the income from their separate property to remain their separate property;
4. Does your client want all of their wages to be separate property during the marriage;
5. Does your client want the retirement they earn during the marriage to be separate property;
6. Does your client want the marital home to be their own separate property or community property;
7. Does your client want money provided to the less monied spouse during the marriage. Are those funds to be the separate property of the less monied spouse;
8. If money is provided to the less monied spouse during the marriage, and perhaps use of a credit card during the marriage, does your client want both benefits to end at the time legal separation or dissolution of the marriage are filed or the spouse dies;
9. Are those funds provided to the less monied spouse to be paid in a manner that incentivizes the spouse to remain in the marriage. In other words, more money the longer the less monied spouse stays in the marriage;
10. Does your client want money provided to the less monied spouse at the time of death, legal separation (note that we do not have such a thing in Texas) or dissolution of the marriage;
11. Does your client want both spouses to waive their rights under Texas Probate law to a family allowance and a life estate in the marital residence;
12. Does your client want both spouses to have some kind of monetary punishment if the marriage ends due to bad behavior such as an extramarital relationship, drug or alcohol problems;
13. How are the daily household expenses to be paid? For example, the groceries, the utilities, clothes, personal grooming, activities and the like;
14. How are the current debts to be paid of each spouse;
15. Does either spouse have any known exposure to a lawsuit or IRS problems that the other spouse needs to be protected from;
16. If there is a dispute over the enforceability of the agreement does the client want that dispute resolved in arbitration or mediation before anything is filed in court. Be sure the client understands arbitration waives appeals unless appeals are written into the provision;
17. Does your client want to provide the vehicle the lesser monied spouse has will always be that spouse's separate property, regardless of how it was purchased;
18. Does your client want to provide for the possibility of jointly acquired or jointly created assets during the marriage; and
19. Does your client want to waive or retain all or some forms of reimbursement claims.
20. The answer to those questions will allow you to plan which provisions to include the agreement.

### C. Pros and Cons of some common provisions

1. Are periodic payments that increase in size the longer the spouse stays in the marriage payments for services rendered?
2. Provisions that do not have an easily identifiable date can create arguments. Such as a provision that something occurs when "the parties separate and stop living as husband and wife."
3. Provisions that include punishment for bad behavior can create extra arguments.
4. Provisions that are written equally to both spouses may not in practice equal to both spouses. For example, if one spouse is a professional athlete and the other is a highly compensated person, a provision that reads that each spouse keeps their own income earned during the marriage may be fairly equal. But the same provision where one spouse is a professional athlete and the other person does not work outside the home is equal on its face, but not in practice.
5. Clients often do not follow the provisions of their own agreements. For example, if there is a provision that one spouse put money in a savings account for the other spouse annually, it often does not occur.



6. Statistically, professional athletes are often broke within a few years of their athletic career ending. If the agreement includes financial obligations many years into the future, is there a risk the professional athlete will not be able to make the payments.

### D. Good Compromise Solutions

1. A large life insurance policy with the spouse as beneficiary can be a good compromise in order to get a waiver of interest in the separate property residence and Texas Statutory probate benefits in the event of death of either party.
2. At the time there is a filing for legal separation or dissolution of marriage, paying the less monied spouse one more monthly or quarterly payment may be a good way to avoid an argument over whether and how long the periodic money payments to the less monied spouse continue after filing.

3. If the parties acquire jointly owned property, then each party's ownership interest is in accordance with their pro rata contribution to the purchase of the asset. If the spouses create a business together you may need to deal differently with the asset.
4. State that the parties have listed all of their separate property assets, excepting anything of monetary value less than \$1,000 or \$500 and do have the non-monied spouse list everything in excess of the stated value.

### E. Logistics of Signing

1. If possible, you want everyone together when the document is signed. A notary is not required, it is just nice. If necessary, you can use an unsworn declaration from **CPRC Sec. 132.001**

2. It is best practice to have the parties sign a ratification document after the wedding. Sometimes this is called a partition agreement or property division between spouses. It does not need to be a complicated document, but rather a ratification of the premarital agreement. The reason is that the language in the Texas Constitution talks about married people partitioning their assets and federal law on retirement accounts requires a *spouse* to sign a waiver of their interest in the account. However, if the clients do not sign it, I know of no cases where the agreement has been void for lack of a ratification document being signed.
3. Do include a waiver of disclosure document at the time the premarital agreement is signed.

### III. Risks in Postmarital Agreements Because of the fiduciary duty between spouses, the circumstances surrounding postmarital agreements or partition agreements and the equity in the property division makes them more difficult.

#### A. The following are a list of considerations unique to drafting post marital agreements.

1. Are there possible fraudulent transfers by one spouse to remove assets away from potential creditors;
2. What kind of assets are being partitioned in comparison with the stability of the marriage;
3. A disproportionate distribution of substantial community

property rights might indicate marriage unstable.

4. Ask your client if:
  - i. Is your client being abused or forced into this agreement?
  - ii. Is this agreement truly for your client's protection or is it fraudulent transfers?
  - iii. How knowledgeable is your client about the community and separate assets of the parties?
5. Ask yourself when drafting whether the facts and circumstances in entirety are reasonable and truly full disclosure;
6. Should a tax expert be consulted on any of the transfers.

### IV. Non-marital Cohabitation Agreements

#### A. Purpose

1. Prevent a person from later claiming a common law marriage and thus community property interest in a large asset and its income. Ask these questions:
  - ii. Is the client about to receive a large amount of money for any reason?
  - iii. Is the client about to receive a personal injury recovery?
  - iv. Is the client about to receive a large signing bonus?
  - v. Is the client about to liquidate significant stock options? AND
  - vi. Is the client in a long time co-habiting romantic relationship?

2. Elements of Common Law Marriage or "Marriage Without Formalities"
  - iii. Cohabitation, Agreement to be Married and Holding out as Married.
  - iv. The only time factor is a two-year statute of limitations on bringing actions to enforce a common law marriage. TFC §2.401(b). It is presumed that there was not a common law marriage if more than two years pass after the parties separate and neither party filed for divorce. There is no such thing as a "common law divorce."

### V. Marital Agreements Do Not Automatically Eliminate Tracing

1. Interpreting the marital agreement often still requires tracing assets and income.
2. Actions Speak Louder than Words - the parties' own actions can nullify, make more difficult or create fact issues that were never anticipated at the time the agreements were prepared and create need for tracing the community or separate property character of assets.

### VI. Convergence of Marital Agreements and Trusts.

In some instances, a trust beneficiary may be required by the trust to have a marital agreement to preserve the separate property character of the trust distributions. Although many people, and even lawyers, believe that distributions from a trust to the beneficiary are separate property, that is not always true. By statute, the

only people who can change the character of community property to separate property or vice versa are spouses, or people about to marry as provided in Texas Family Code Chapter 4. A trust document by itself cannot do so. See – *Buckler v. Buckler*, 424 S.W.2d 514 (Tex. App. Fort Worth 1967) – income still sitting in the trust that the trustee has the right to withhold distribution is not community income; – *Sharma v. Routh*, 302 S.W.3d 355 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2009, no writ) – if a married beneficiary has an interest in the corpus of the trust and receives income from the principal of the trust, then the income received is community; <sup>2</sup> *Ridgell v. Ridgell*, 960 S.W.2d 144 (Tex. App. – Corpus Christi 1997, no writ); *Hopper v. Hopper*, 270 S.W.2d 256, (Tex. Civ. App. – Dallas 1954, writ dismissed). “The Texas Mess: Marital Property Characterization of Trust Income” by Steven D. Baker, J.D., CPA, 2013.

### VII. Conclusion

Preparing marital agreements in Texas is not easy for a wide variety of reasons, but a major one is that the client’s judgment is clouded by emotion. It is difficult for parties to be objective when they are in

“love” and thinking in romantic terms about the next 40 years of wedded bliss. Engaged couples are not anticipating divorce and the last thing they want to contemplate while they are planning what they probably view as the greatest day of their life is how to divide up the assets if the unthinkable happens and their partner falls in love with someone else... or they find out that their partner has more deficits than credits... or that they have vastly different views on how to live

life. At that point it is too late to do much other than regret that they didn’t do a better job of planning for the breakup, and they might blame you for not talking some sense into them.

It is the lawyer’s job, as probably the only objective person in the room, to try to protect the client from themselves and their own “Pillow Talk Negotiations.”

<sup>2</sup>See also *Creating, Attacking and Defending Pre-Marital and Post-Marital Agreements* Norman A. Lofgren & William M. Reppeto, III, November 27, 2012.

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Cody Lewis

# RECOVERING FROM THE DEBTOR POST-JUDGMENT

So, you have a judgment, now what? Ideally, the prevailing party—the judgment creditor—will have vetted the judgment debtor’s assets before filing and during the suit. If so, the judgment creditor should have some idea of the debtor’s assets that could be used to satisfy the judgment. This knowledge will increase the likelihood of recovery, assist counsel and make the post-judgment recovery process easier and less expensive. If not, the

judgment creditor may still obtain payment, but it will likely be more expensive, take a little creativity and require counsel with experience in post-judgment collections. The following discussion serves as a basic, non-exclusive list of tools the judgment creditor can use to recover from the debtor. These remedies can be useful for both the creditor who thoroughly vetted the debtor and those who have not.

A **judgment** must be final before a creditor can enforce post-judgment remedies. A judgment is final thirty-days after the date the judge signed the judgment. A judgment is generally enforceable for ten years. After the initial ten-year period, a judgment may be renewed.

The first step in enforcing a judgment is to issue an **abstract of judgment** and writ of execution. A properly recorded abstract of judgment creates a lien on the judgment debtor’s non-exempt real property within the county or counties where the abstract is recorded. The abstract should be recorded in every county where the judgment debtor owns real property in order to enforce the lien on all the judgment debtor’s property. The recorded abstract provides notice of the judgment to subsequent purchasers.

The abstract must be **correctly indexed**, or the lien will fail. Even minor mistakes can destroy the lien. After the abstract has been recorded and if the debtor satisfies the judgment, any and all outstanding judgment liens must be released. A judgment debtor that satisfies the judgment may have a cause of action for slander of title if the creditor fails to file a release of the judgment lien.

A **writ of execution** authorizes and orders a peace officer to enforce the judgment. The writ is enforceable for thirty, sixty or ninety days. The officer must proceed without delay to levy on the judgment debtor’s nonexempt property within the officer’s county or precinct. The officer can levy on real property, personal property, shares of stock and goods pledged, assigned or mortgaged as security as well as livestock.

If the judgment debtor **appeals the judgment**, generally, enforcement of the judgment is suspended. The appeal does not stop the accumulation of interest on the judgment, though. And, the abstract may still be issued and recorded, but the lien will be suspended during the appeal. The court will not issue a writ if the debtor files a supersedeas bond or notice of appeal. If the writ has already been issued, the clerk must immediately suspend further proceedings, including the writ.

The next step in enforcement is a **garnishment** of the debtor's funds held by a third-party. Creditors initiate garnishment by filing a new lawsuit against a third-party. Usually, a creditor will garnish the debtor's bank account, but safety deposit boxes, shares of stock, promissory notes and revenues from a trust fund are also subject to garnishment. The creditor must have a final judgment to file a writ of garnishment. The writ of garnishment must be verified and include an affidavit of the creditor. After the writ of garnishment is filed, an officer must serve the writ on the garnishee. The debtor must also receive a copy. After service, the creditor should contact the garnishee in order to negotiate the garnishment of the debtor's funds.

**Post-judgment** discovery is used to identify the debtor's assets. Interrogatories and requests for production are the primary discovery tools. Depositions may help to identify specific information, and admissions are valuable in proving up turnover relief. If the debtor does not respond to discovery, a writ of attachment may be used to have the debtor arrested and brought before the court. This may lead to a negotiation or contempt

for the debtor. For obvious reasons, creditors will be wise to carefully consider this option.

Finally, **turnover relief** provides the creditor with aid from the court. The court appoints a receiver, who is granted rights to reach the creditor's property to satisfy the judgment, including attorney's fees, interest and costs. With the court's appointment, the receiver has greater authority than the creditor to reach the debtor's assets. And, ideally, a receiver will have specialized experience, knowledge and skills in recovering assets. Creditors should know that the costs associated with receivers differ depending on the judge, and the creditor must post bond before the court will appoint a receiver. The judgment does not have to be final to file a motion for turnover relief.

Although a judgment creditor may not think it is possible to recover from the debtor, with a little due diligence and the assistance of an experienced attorney, creditors stand a fighting chance at recovering from their debtor.

If you have a judgment or are thinking of filing a lawsuit, you should seek legal advice.

– By Cody Lewis

### About

Cody J. Lewis received his Bachelor's degree in English in 2005, from the University of Texas at Arlington, where he graduated *Magna Cum Laude* and served as Student Congress Parliamentarian. He obtained his law degree in 2010 from Saint Mary's University School of Law. He served as an intern to the Honorable Rebecca Simmons, at the Texas Court of Appeals, Fourth District, San Antonio, Texas in 2010. He is licensed to practice in all Texas Courts and the U.S. District Court Northern District of Texas.

He has also served as a speaker and authored *Post-Judgment Collection Strategies*, Collections: Seeking and Collecting a Judgment for the National Business Institute.

### Areas of Law

- Commercial Litigation
- Commercial Law
- Creditors Rights
- Corporate Law
- Eminent Domain
- Condemnation
- Materialman's Lien Claims
- Real Estate
- Landlord and Tenant Law
- Commercial Collections
- Business Law
- Payment Bond Claims
- Corporate Law
- Mediation

### Community Involvement

- Leadership Denton 2019
- Special Citizens Bond Advisory Committee 2019



# HOW TO DEAL WITH BORDERLINE PERSONALITY DISORDER

People with personality disorders often seem to have two personalities. They might be quite reasonable at work and with friends, then revert to dysfunctional, extreme behaviors at home. Personality disorders usually begin in childhood or adolescence, and while those around people with personality disorders wish they would change, it doesn't happen without: 1) recognition, 2) a strong commitment, and, in most cases, 3) years of therapy. Many people have some traits of a personality disorder without actually having a disorder. By the time they're adults, it has become an automatic reaction to blame everything on the other person in the relationship.

### THE DSM-5 CRITERIA FOR BORDERLINE PERSONALITY DISORDER INCLUDE SOME OF THE FOLLOWING CHARACTERISTICS:

- Compromised ability to recognize the feelings and needs of others
- Instability in goals and/or career plans
- Unstable and/or conflicted close relationships
- Preoccupation with abandonment
- Frequent mood changes
- Intense emotional swings, out of proportion to events and/or circumstances
- Impulsiveness
- Reactionary behavior in response to immediate stimuli

- Difficulty establishing and following a plan
- Engagement in unnecessarily self-damaging activities, without regard to consequence
- Frequent anger or irritability in response to minor slights or insults
- Antagonism

**It is important to note that people with Borderline Personality Disorder, during a divorce or court proceeding, may also:**

- Purposely or unconsciously use sensitive information (such as finances, medical diagnoses, or other personal information) to sway others to their viewpoint
- Seek revenge – by destroying personal property or spreading false rumors
- Seek vindication – by demanding loyalty or filing lawsuits

People with characteristics of a personality disorder often show patterns in their behavior. One of the most common is referred to as “splitting”, where, though maybe unconsciously, they see people as all good or all bad. This can be an extreme way to cope with confusion, anxiety, and other mixed feelings often associated with divorce and child custody matters.

In their book *Splitting – Protecting Yourself While Divorcing Someone with Borderline or Narcissistic Personality Disorder*, Bill Eddy, LCSW, JD and Randi Kreger, set forth excellent strategies for how to and how not to deal with borderline personality disorder:

### HOW NOT TO DEAL WITH BORDERLINE PERSONALITY DISORDER:

As family law attorneys, we meet with people regularly who face the challenge of communicating with a partner with characteristics of a

personality disorder. Many times, when the other party communicates in an aggressive manner, it is perfectly understandable that sometimes you feel like responding in kind. Maybe you want to cut them out of your life completely, or one up them with a real zinger. While it may feel good in the moment, you are giving your partner ammunition to use against you and may even see your own words show up in court against you. Don't fuel your partner's fire, because in the end, you may end up increasing the unwanted behavior that is directed toward you.

On the other end of the spectrum, and equally problematic, is giving up or giving in completely. While it may be very tempting to give in to the demands of a high conflict personality in an attempt to settle or end your divorce or child custody dispute quickly, in most cases, we do not recommend it. While not every statement or accusation necessitates a response, not correcting false statements may create future legal problems for you. Don't let your attempt to avoid conflict allow your partner to persuade others or the court that you should be punished or restricted by the court in some way.

Bill Eddy, LCSW, JD and Randi Kreger, *Splitting – Protecting Yourself While Divorcing Someone with Borderline or Narcissistic Personality Disorder*, New Harbinger Publications, Inc. (2011).

## HOW TO DEAL WITH BORDERLINE PERSONALITY DISORDER

As family law attorneys, we help our clients navigate a difficult truth, daily. It can feel like if you act reasonably and try to use the same cooperative problem-solving skills you do in daily life, you are at risk of losing your case. Such is the dilemma faced by the reasonable person in family

court, because family court is seen as highly adversarial, and can feel like it tends to reward combative thinking and behavior. We do not believe this to be true and make it our priority to help our clients navigate the process. Our attorneys advocate an assertive approach, and court research shows that lawyers who take an assertive approach are equally as effective with the outcome of the case as ones who use an aggressive approach, even though aggressive attorneys may appear more successful on the surface.

Bill Eddy, LCSW, JD and Randi Kreger, *Splitting – Protecting Yourself While Divorcing Someone with Borderline or Narcissistic Personality Disorder*, New Harbinger Publications, Inc. (2011).

## THE ASSERTIVE APPROACH

### 1. Start Documenting

It is critical that you keep detailed, accurate information to present to the court. Focus on actual statements and behaviors, avoid opinions and interpretations. If or when you need to describe events in court, you want to be seen as capable of presenting objective, factual information that is helpful to the judge and other professionals. Information written down on the day of the event is far more credible than information documented days or weeks later.

### 2. Think strategically, not reactively

Avoid acting out of frustration and anger. Avoid reactionary communication with the other person. Seek advice whenever you feel like responding out of anger or frustration. Advise your friends and family of the same.

### 3. Choose your battles

Going through a divorce or child custody matter with someone who exhibits characteristics of a personality disorder can lead one to feel that the court process is inherently unfair, allowing the other person to get away with things. The actions in your case have to be strategic, and based on what is needed in your case, not on what you are upset about. This is why it is so important to have a strong attorney who understands you, your case, and the characteristics of personality disorders that you may be dealing with on the other side.

### 4. Don't make yourself a target

Stop and think before you act. You are being watched by your partner and your partner's attorney. They are looking for you to slip up so they can hold it against you. Anything you say, whether to your partner, their family, or even your children, may be misconstrued or blown out of proportion. Maintain a low (or no) profile on the internet and social networking sites.

### 5. Be very honest

While it may not be the most comfortable thing you've ever done, you need to be up front and honest with your attorney about your own errors or moments of poor judgment, whether in the past, or that occur in the present, as soon as you recognize them. You're human, but you're also a target, and you do not want to give your partner ammunition of which your attorney may be unaware. Remember, credibility is everything in court, and while those with personality disorders are generally good at appearing credible, you must ensure you *are* more credible.

## How to Deal with Borderline Personality Disorder

Texas Paralegal Journal  
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### 6. Expose blamer behavior

Those with personality disorders have a tendency to create some of the most useful evidence against them during the litigation process. Keep in mind that they have repeating patterns of behavior and will try to control the court process. They tend to make dramatic statements at hearings and/or ask for heavy controls to be put on their partners (you) for a myriad of reasons. These extreme statements can be very handy in showing the court later that they are false.

### 7. Respond quickly

While there are some statements and correspondence that warrant no response, false statements and extreme actions generally need a quick response. Otherwise, if you don't respond, it may be perceived as if you agree that they are true or appropriate statements. If you and your attorney respond assertively, not aggressively, the borderline personality disorder will typically back off.

### 8. Manage your own emotions

Dealing with someone with borderline personality disorder characteristics can be extremely difficult, especially if their behavior escalates and their blame of you is extreme. It is easy to want to respond with the same emotional intensity. However, keep a matter-of-fact tone and voice. Pace yourself and conserve your energy to deal with the important battles (remember, choose your battles). Not every zinger needs a response.

### 9. Develop patience and flexibility

Even if you don't feel it, learn to calmly show patience and flexibility. Allow time for your partner or former partner to process upsetting information and avoid presenting information or a decision as a crisis that must be instantly resolved. People with borderline personality disorder will often overreact at first, so giving them a heads up and showing your flexibility may reduce the sense of a threat. On the flip side,

it is common for someone with the characteristics of borderline personality disorder to feel that they are in a crisis and want you to make an instant decision. Be firm and tell them you need time to think it through but will get back to them. Give them a time certain that you will respond (see below).

### 10. Give clear messages and deadlines

You must balance patience and flexibility with a very clear message and deadlines. Do not be ambivalent. Remember, this is the assertive method of communication. When clear communication is not enough, add a deadline. You may not necessarily need to start with one, but if you receive no response, remember you or your attorney may want to memorialize your request(s) in writing.

Bill Eddy, LCSW, JD and Randi Kreger, *Splitting – Protecting Yourself While Divorcing Someone with Borderline or Narcissistic Personality Disorder*, New Harbinger Publications, Inc. (2011).

It is important to make your attorney aware of the personality disorder characteristics your spouse exhibits from the beginning. You want to hire a strong, assertive attorney who will advocate for you and your interests.

**For more information, or to schedule a consult with one of our family law attorneys, call 940-230-2386.**



## How to Deal with Borderline Personality Disorder

Texas Paralegal Journal  
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Kirsten A. Bode

### About

Kirsten brings over a decade of legal expertise and knowledge to her work, which focuses exclusively in the area of family law. Kirsten spent several years in general practice, but decided to narrow her focus to family law when she realized the valuable real-world experiences and skills she had developed over many years would best be put to use helping families and children through some of their most vulnerable moments in life.

Kirsten understands the emotional challenges a person can go through when they marry or divorce. She understands even more the delicate,

emotional, and unique set of challenges children may add to a situation. Being in Kirsten's hands means you have an honest and compassionate lawyer on your side, working with a team of dedicated professionals, who will give their all to you and your case.

Kirsten is a seventh generation Texan, tracing her roots to a German land-grant in present day Mason County, where her grandparents still reside. She and her husband, who met their freshman year in college, are proud second-generation residents of Denton County.

### Education

- Texas A&M University – Bachelor's Degree – 2002
- University of Houston School of Law – Juris Doctorate – 2005
- The George Washington University – Master's Degree – 2014

### Areas of Law

- Family Law
- Alimony
- Annulment
- Collaborative Family Law
- Community Property Law
- Divorce
- Domestic Relations
- Interstate Support
- Domestic Violence
- Equitable Distribution
- Legal Separation Agreements
- Marital Agreements
- Marital Property Distribution
- Marital Property Settlements
- Marital Property Law
- Matrimonial Law
- Military Divorce
- No Fault Divorce
- Palimony
- Postnuptial Agreements
- Post Divorce Modification
- Paternity
- Qualified Domestic Relations Orders (QDROs)
- Premarital Agreements
- Restraining Orders
- Spousal Support
- Uncontested Divorce
- Child Custody
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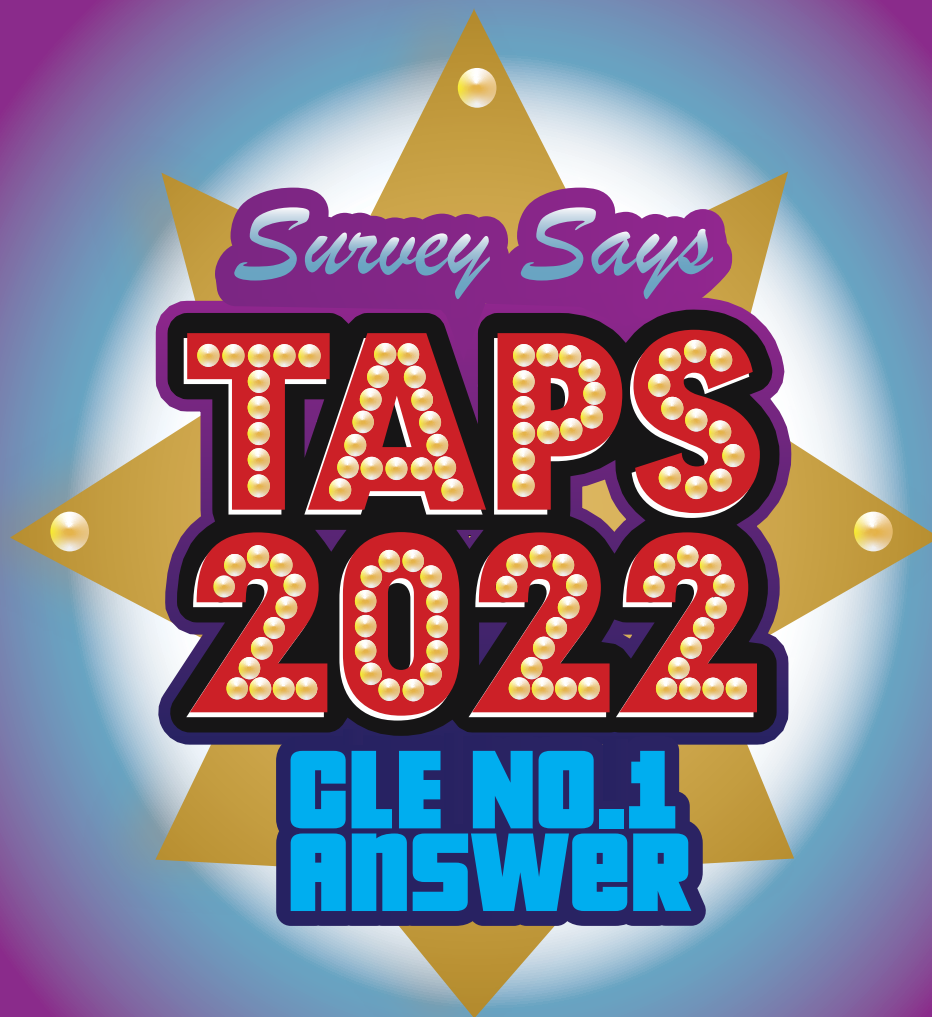
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### THREE DAY REGISTRATION

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- Complimentary ticket to the Wednesday Welcome Social and Thursday Networking Social

### ONE DAY REGISTRATION

- Admission to one day of CLE (Wednesday/Thursday socials and Friday Luncheon are an additional fee)
- Seminar materials downloaded prior to event and available on TAPS App

## SOCIALS

The TAPS week begins with a face off with your vendors at the TAPS Happy Hour. Enjoy visiting with friends and a game with our vendors for door prizes, while enjoying a few snacks and drinks.



On Thursday it's "TIME to PLAY the TAPS FAMILY FEUD" Join fellow TAPS family members at The Ashton Depot for a rousing feud game while enjoying dinner. As always, we will have some of our favorite vendors on hand to join in the fun. Dress as your favorite game show host, or game show participant for our annual costume contest. You will not want to miss out since game prizes will be up for the winners!

## HOTEL ACCOMMODATIONS

The Sheraton Fort Worth Downtown Hotel is located at 1701 Commerce Street, Fort Worth, TX 76102. The hotel reservation deadline is September 12, 2022. Reservations must be booked and cancelled through The Sheraton. Guest room rate is \$135.00 for single/double. All guest rooms are listed under TAPS 2022. To reserve a guest room, either [register online](#), or call 1-817-806-3757 and reference the group code TAPS 2022. Note: If the desired room you are reserving is not available online, please call 1-817-806-3757. Negotiated parking rates are \$30 per night or \$20 daily.

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# Keynote Speaker



## Justice Eva Guzman

Justice Eva Guzman serves as a shareholder in Chamberlain Hrdlicka's commercial litigation and appellate practices in both the Houston and San Antonio offices. Justice Guzman began her legal career in family and civil law, practicing in Houston for 10 years before then-Governor George W. Bush appointed her to the Family District Court bench in Harris County in 1999. In 2001, then-Governor Rick Perry appointed her to the Texas 14th Court of Appeals. In 2009, he elevated Justice Guzman to the Supreme Court of Texas, where she became the first Latina to serve on Texas's highest civil court and the first to win statewide office in Texas.

Over the course of her judicial career, Justice Guzman ruled on thousands of civil and criminal appeals and authored more than 900 opinions, many on issues of first impression. She has also served as an adjunct professor at the University of Houston Law Center, teaching trial advocacy. For many years, she has been a speaker and presenter at state and national legal conferences and symposiums. An elected member of the prestigious American Law Institute, Justice Guzman has collaborated with other legal professionals on various studies and projects and authored articles for a number of legal publications.

Justice Guzman graduated from the University of Houston with a bachelor's degree in business administration. She received a law degree from the South Texas College of Law. She also holds an LL.M. in Judicial Studies from Duke University School of Law, where she took classes from United States Supreme Court Justices Antonin Scalia and Samuel Alito.

### Key Note Address:

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# Highlighted Speakers

## A. Brook Fulks, J.D. M.S.



A. Brook Fulks is Board Certified by the Texas Board of Legal Specialization in Family Law. She knows family law and understands families. Brook recognizes the importance of helping clients reach resolution smoothly and efficiently. She strives to meet her clients' litigation needs while also supporting information resolution when possible. She is experienced in handling cases involving divorce, suits affecting the parent-child relationship, child support, parental termination, CPS, and enforcements of property, possession, and child support matters.

Brook is a graduate of Baylor School of Law where she was trained in trial advocacy. She also completed her mediation training and a Master of Science in Psychology at Abilene Christian University. Brook has participated in over 80 mediations as a mediator or attorney.

Brook currently serves as Vice President of the Collin County Bar Association Board of Directors and co-chairs the Collin County Bar Association Trial Academy. She is also President of the Collin County Protective Services Board and a committee member on the State Bar of Texas Local Bar Services Committee. Brook is very active in her community through the Junior League of Collin County, Leadership McKinney Alumni Network, and various political organizations. Brook lives in Frisco with her husband and three children.

## Joshua Ross



Joshua D. Ross is a partner with Cantey Hanger, LLP. Mr. Ross primary practice of law is medical malpractice defense. He also practices environmental law and white collar criminal defense. Prior to joining Cantey Hanger, Mr. Ross spent a decade as a state attorney on high-profile criminal litigation. Mr. Ross will be presenting on "Black Robes and White Coats, or just Shades of Gray?". The presentation will cover the use of Temporary Injunctions, Court Orders and Appeals regarding the Practice of Medicine.

## Register Early and Save!

Deadline for early registration is August 15 2022. On-Line Registration ends September 19, 2022. Registration is available ONLINE ONLY at [txpd.org/taps-home/](http://txpd.org/taps-home/). Credit card, check or money order is accepted as payment. There is a \$5.00 handling fee for payment by check or money order. After September 19, 2022 only on-site registration will be accepted by check or credit card only. To be eligible for member pricing you must be a member of the Paralegal Division or apply for membership no later than September 6, 2022.

These and many other speakers will provide up to 13 hours of advanced level CLE at TAPS 2022

Don't Miss Out!

Register now at:  
[txpd.org/taps-home/](http://txpd.org/taps-home/)



State Bar of Texas  
Paralegal Division



# TAPS Prices

## THREE DAY REGISTRATION

PD Member Registration Fee \$350\*

Non-PD Member Registration Fee \$450\*

## ONE DAY REGISTRATION

PD Member Registration Fee \$200\*\*

Non-PD Member Registration Fee \$300\*\*

## Additional Fees/Information

Box Lunch on Thursday \$25

\* Registration Fee includes ticket to Wednesday social, Thursday social and Friday luncheon

\*\* Social and luncheon tickets for the day of CLE can be purchased at an additional fee

TAPS T-Shirt - Complimentary with registration

## Social Tickets (prices per person)

WEDNESDAY: "It's the TAPS Happy Hour" One-Day Attendee \$20

Wednesday Social added Guest \$30 THURSDAY: "Time to Play the TAPS Family Feud" One-Day Attendee \$65

Thursday Social added Guest \$75

FRIDAY LUNCHEON: "The Final Round" One-Day Attendee/Guest \$50

# Schedule

## Wednesday, September 28

Registration 8:00 AM—4:00 PM

Presentations 9:00 AM—5:00 PM

Social 5:15 PM—6:45 PM

## Thursday, September 29

Registration 7:00 AM—4:00 PM

Exhibit Hall 7:00 AM—2:00 PM

Presentations 9:00 AM—5:00 PM

Social 6:30 PM—9:30 PM

## Friday, September 30

Registration 8:00 AM—10:00 AM

Presentations 8:15 AM—11:30 AM

Luncheon 11:45 AM—1:30 PM

## FRIDAY MORNING SPECIAL SESSION

### "Bonus Points "

Need an hour of ethics? Then you will want to join in this bonus round of ethics and challenges.

Be a Part of TAPS 2022 and the Paralegal Division Annual Meeting.

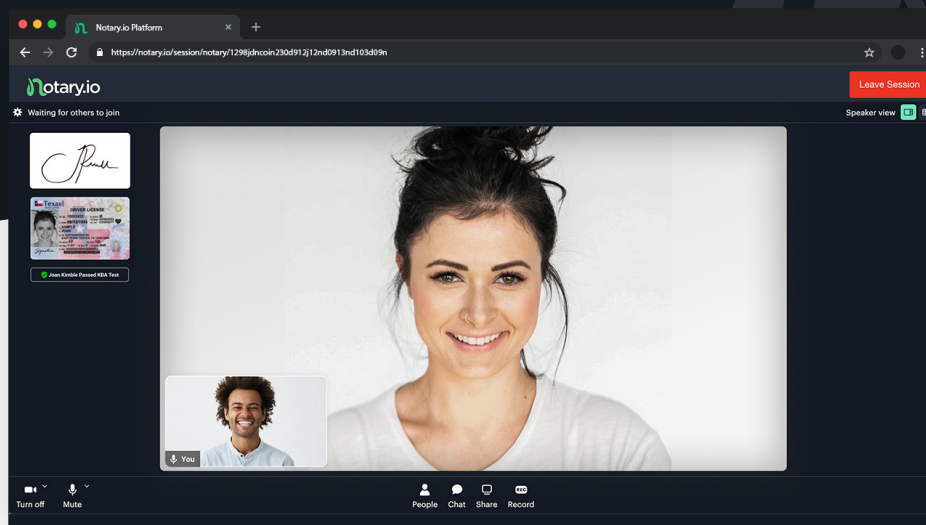
See [HERE](#) for Complete List of Sponsors and Exhibitors.



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Estate Planning Documents	Lien Waivers
Powers of Attorney	Confidentiality Agreements
Sworn Account Petitions	and so much more...
Property Deeds	

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Ellen Lockwood

# THE ETHICS OF ACQUIRING LEGAL SOFTWARE PROGRAMS

It seems almost every day there is a new legal software being marketed. Sometimes it is an entirely new product, other times it is a major overhaul of a program that has been around for years. Regardless, there are ethical issues that must be addressed prior to purchasing new or updated software.

One of the first things that should be confirmed is that your organization will own the data your organization puts into the software. Because

this is critical, it is not enough to rely on language in the shrink wrap agreement, or a vendor's verbal assurances. Depending on the software and the software provider, your organization may need a specific agreement that specifies your organization's data belongs only to your organization.

Another critical factor is to evaluate the software provider's security procedures. Many developers do not address security during software

development, and only add it just before the software is released. This can lead to major security gaps. And once the product is in use, the focus tends to be on new features and optimization of performance. While most reputable software providers will include two-factor authentication, it is not safe to assume a software provider's security will stay the same over time. The software provider's security should be re-evaluated on a regular basis, and after updates.

In addition to security for access to the software, the provider should have information on how personally identifiable information in the software is safeguarded. One method would be to encrypt such information, so it is not as easily used and potentially distributed.

Algorithmic bias is another factor to consider. Bias is usually not intentionally included by the developers, but unless the developers remove bias from the algorithms, it will be present in the software. Software providers should be able to provide information on how the developers worked to remove bias.

If the software you are considering is from a new provider, it is worth investigating the people involved in the software company. For example, if you discover that the new software provider is helmed by people who have a less than stellar track record in the industry, you may want to reconsider purchasing the software, at least for now. If it turns out in a few years that the product and the provider are solid and reliable, you can always reconsider.

## The Ethics of Acquiring Legal Software Programs

Texas Paralegal Journal  
Summer 2022

After vetting the software and the provider, your organization should consider the following before purchasing the software:

- What need does the new software serve? If the software will not provide a significant benefit, then perhaps it is not a wise investment.
- Who will be able to access the software and what rights will they have? Who will have admin rights, who will have data entry and edit rights, and who will only have viewing rights?
- What authorization is required to access the software?
- What kind of training will be required? Would it be beneficial to have different levels of training depending upon how each user will use the software?
- Who will ensure the training includes the organization's security protocols regarding the software, as well as why those protocols are important?
- Will a new policy be required to address users who jeopardize the organization's data?

While new software can be exciting, especially if it will make our jobs easier and help us provide better services to our clients, it is the organization's ethical responsibility to thoroughly investigate the software and software provider before incorporating it into our practice.

Ellen Lockwood, ACP, RP (she/her/hers) is the Chair of the Professional Ethics Committee of the Paralegal Division and a past president of the Division. She is a frequent speaker on paralegal ethics and intellectual property and the lead author of the Division's **Paralegal Ethics Handbook** published by Thomson Reuters. She may be contacted at [ethics@txpd.org](mailto:ethics@txpd.org).



# 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>



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



## THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

### ATTENTION LITIGATION STAFF

FEBRUARY 2023

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28		

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# PD Board of Directors

## MEET YOUR NEW 2022-2023 EXECUTIVE COMMITTEE

### President – Lisa Pittman

Lisa Pittman is a senior paralegal with the law firm of Hayes, Berry, White & Vanzant, LLP working with partner Richard Hayes for over 22 years. She has over 25 years experience and works primarily in the areas of residential and commercial real estate, oil & gas, eminent domain, and civil litigation. Lisa has been a member of the Paralegal Division since 2005. She serves as the TAPS Scholarship Committee Chair and Secretary (2022). In addition, she served as the District 12 Director from 2018-2021; Secretary from 2019-2021, Chair of the Public Relations Committee and Mentor/Protégé Committee from 2009-2012; as the Sub-Chair for the Public Relations Committee from 2007-2008; and as a TAPS on-site volunteer for many years. She is a member of the Texas Bar College.

She is a member of the Denton County Paralegal Association (DCPA) and has served in a variety of roles over the years: notably as Secretary/Parliamentarian 2006-2008 and 2011 and as Treasurer from 2009-2021. She has served as the Committee Chair for the Legal Directory Committee, Bylaws Ad Hoc Committee and the Newsletter Committee.

Lisa has been married to Todd for 43 years. They have a son, Shaun and daughter, Natasha, 3 granddaughters and 1 grandson. She enjoys spending time with family, horseback riding, cooking, reading, and crafting. Lisa along with her husband and daughter breed, raise and show their purebred Arabian horses.



Lisa Pittman



Joncilee H. Miller

### President-Elect – Joncilee H. Miller, ACP

Joncilee H. Miller, ACP is a litigation paralegal in the Holden Litigation, and over 25 years of experience as a paralegal.

Joncilee attended Texas A&M University and obtained her BA in Political Science. She also received her Master of Science degree Magna Cum Laude from Amberton University in Human Relations and Business. She is an Advanced Certified Paralegal in Trial Practice ("ACP") through NALA).

Joncilee is a charter member and past President of the North Texas Paralegal Association. She is also a charter member of the College of the State Bar of Texas, Paralegal Division.

Joncilee has served the Paralegal Division of the State Bar of Texas in many capacities for the past 24 years. She is honored to be elected to serve as President-Elect for the 2022-2023 year.



Shannon Shaw

### **Treasurer – Shannon Shaw**

Shannon Shaw is a trial paralegal with the law firm of Cotten Schmidt, L.L.P., located in The Woodlands, Texas and currently served as the Director of District 10. Shannon has over 20 years of experience in the legal field and practice in the areas of civil litigation, family law, bankruptcy, maritime law and personal injury. Shannon has worked with the same shareholder at Cotten Schmidt, L.L.P. for over 13 years. After graduating high school, Shannon's first job was working in a law office. In 1996, Shannon received an Associate's Degree in Applied Sciences and Paralegal Studies from El Centro Community College in Dallas, Texas. In 1998, he received his certificate in Paralegal Studies from

Texas Wesleyan University in Fort Worth, Texas as well as a Bachelor's degree in Legal Studies. Shannon joined the Paralegal Division of the State Bar of Texas in 2013. That same year, he served as the Vendor Liaison Committee Co-Chair and District 10 CLE Sub-chair. He continued to served the Paralegal Division in that capacity until 2016. From 2016-2017, Shannon served as the Online CLE Committee Chair. Shannon is also a current member of National Association of Legal Assistants (NALA). Shannon volunteers with several different local organizations in the Greater Houston area and spend his spare time enjoying outdoor sports.

### **Secretary – Alice Lineberry, PLS, CP**

Alice has been a voting member of the Paralegal Division since 1988. She has served the Division as a mentor, as the Membership Chair 2018-2019, Annual Meeting Chair in 2018, on the TAPS Planning Committee-Speakers Committee (2014), and CLE Sub-Chair for District 4 for the last several years.

Alice is a paralegal with the law firm of DLA Piper LLP (US) in Austin and has been with the first since 2001. She has over 35 years of experience in various areas of the law, with the last 19 years primarily focused on patent infringement litigation. In 1988, Alice earned her Professional Legal

Secretary (PLS) certification from the NALS. Alice became a Certified Paralegal through NALA – The Paralegal Association in 1990.

Alice has been a voting member of the Capital Area Paralegal Association (CAPA) since 1994 and has served CAPA in various board positions and committee roles over the years, including President. She is currently serving as the Lunch & Learn Chair.

Alice has been married to Colin for 25 years, and they have two sons, Travis and Matthew. She enjoys spending time with family, traveling, reading, and cooking.



Alice Lineberry



Kimberly A. Goldberg

### **Parliamentarian – Kimberly A. Goldberg, TBLS-BCP**

Kim's experience and areas of practice concentrate primarily in large and small, complex and simple, commercial litigation matter; including lender liability defense; securities; disputes involving financial institutions; contract claims; construction and employment law. She has participated in many trial and arbitrations in both state and federal courts in Connecticut, Maryland, Missouri, Oklahoma, Louisiana, Utah and Texas.

Between 2007 and 2011, Kim worked with a beginner start-up renewable energy company in the capacity as Vice President of Administration and Human Resources with overall responsibility for development and implementation for human resources and administration. In a short period of 36 months the company grew from 25 to 325 employees expending into 10 different regions among 5 states.

### **Paralegal Division Coordinator – Rhonda J. Brashears, CP, TBLS-BCP**

Rhonda Brashears has been the Paralegal Division Coordinator since November 2015. Her role on the Executive Committee is one of mentor, to provide historical and procedural information about the Paralegal Division.

Rhonda is also a paralegal with the firm of Underwood Law Firm, P.C., Amarillo, Texas, and has been a paralegal for 34 years. She specializes in personal injury and civil trial defense law. She received her B.G.S. from West Texas A&M University in 1998, her Certified Paralegal designation from the National Association of Legal Assistants in 1996, and was board certified by the Texas Board of Legal Specialization in Personal Injury Trial Law in 1998.

She has been a member of the Paralegal Division since 1990. She currently serves the Division as an Ambassador. In addition, she served as Director of District 7, 1996 until 2001, Secretary, 1999 to 2001, President Elect in 2001 and 2007, and President of the Division in 2002 and 2008. She has also previously served as Chair of the On-Line CLE Committee, the TAPS Planning Committee, the Publications Committee and as Editor of the *Texas Paralegal Journal*, receiving the Outstanding Committee Chair of the Year as the Publications Chair 2006-2007.

Rhonda is a member of the Texas Panhandle Paralegal Association, where she has served as President, President-Elect, Treasurer and NALA Liaison.



Rhonda J. Brashears

## Meet Your New 2022 – Board of Directors

(see <https://txpd.org/contact-pages/board-and-committee-contacts/> For more information about your director and how to reach out to them)



Kimberly A. Goldberg,  
TBLS-BCP  
Director District 1



Heather Ulliman  
Director District 2



Wayne Baker, Jr., RP  
Director District 3



Alice Lineberry,  
PLS, CP  
Director District 4



Pearl Garza  
Director District 5



Erica Anderson, ACP  
Director District 7



Shannon Shaw  
Director District 10



Stacey Marquez  
Director District 11



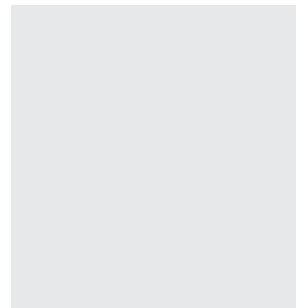
Pamela Snavelly, ACP  
Director District 12



Maria Sturdy  
Director District 14



Arturo Ortiz  
Director District 15



Vacant  
Director District 16



***"After the outgoing meeting the 2022-2023 Board of Directors and Officers were installed, which includes the passing of the gavel from Immediate Past-President Susi Boss to Incoming President Lisa Pittman."***



Susi Boss

***"Do one thing everyday  
that scares you"***

**- Eleanor Roosevelt**

My term as your President has come to an end and it has been quite a great experience. Lisa Pittman as your new President is an awesome woman. We made a great team and with the help of our PD Coordinator Rhonda we made it through. Thank you both for the support that you gave me but what you have both given to our PD members shows the commitment to our organization. The 2021-2022 Executive Board was amazing. We lost a few along the way and welcomed new faces and the puzzle always managed to have all the right pieces, thank you all for your support, words of wisdom, ideas and mostly for the friendships that will remain no matter what.

Thank you to my boss, Charles E. Hardy of Higdon, Hardy & Zuflacht and to all of our attorneys and staff for their support during my term as your President. I don't think they realized that it took the HHZ army to keep me sane some days (and long nights). Couldn't have done it without them all.

To our great PD organization. All of you committed to the PD as paralegals, legal assistants and legal professionals. You have shared on E-Group when someone needed a form, a referral or to find out how a specific Court works. You have, by your support, enthusiasm and dedication, brought in new members or old members back into the fold. Keep up the great work of support for PD. Not just by showing your membership each year but by being a Chair for PD Committees, sub-chairs for your District and yes that "Directorship" for your District. Take that step outside your comfort zone and find a whole

new world of the PD. Read and write for the TPJ and for the Paralegal Pulse. There is so much for every one of us to do and continue to support the PD and making our "Presence" known throughout our local areas, our state wide involvement, our attorneys and judicial members.

We celebrated our 40<sup>th</sup> year. What a great accomplishment. The first state to start a thought of what paralegals could do and look what has been accomplished from that handful of paralegals and a great man we lost this year, Mr. Hannah. He believed in us until his passing and I hope we will honor his memory for the debt we owe to his support.

Remember your CLE forms and keep them in a file because you never know who gets picked for spot audit.

Open the TPJ and Paralegal Pulse and read them don't just read from the email, we need to know who is really opening our great magazine and monthly newsletter and if you have thoughts or ideas, trust me we are open to it all.

We have made great strides in ideas and opportunities, including publishing a 40<sup>th</sup> Anniversary article in the State Bar Journal, we thank you for your recognition. We worked with TYLA to update their Paralegal Guide. Our Long Term Strategic Planning Ad Hoc Committee made great strides and has given our Board and future Boards wonderful ideas for the PD future and our Student Liaison Ad Hoc Committee – all I can say is WOW. What a great job of reaching out to the Paralegal Schools, speaking and bringing more students into our membership area and becoming involved with PD.

## Susi Boss Outgoing Message

Texas Paralegal Journal  
Summer 2022

TAPS 2022! Family Feud here we come. I am so excited for our September TAPS in Ft. Worth. The speakers, the socials and involvement of our Sustaining Members, the Vendor Hall is going to be GREAT but that's not anything new. Our socials are going to be a big surprise and for those of us who love costumes – starting thinking about it now! You want CLE – this Committee is shooting for the stars for your speakers and they are making this year full great topics for all of us. Stay tuned. Remember registration is already open.

I guess my final thoughts are going to come from how I feel my year played out. My “baseball analogy” for 2021-2022. I started out on home plate

in June of 2021 and by September I was on 1st base. TAPS was a back in-person event and we made it in safely with the enthusiasm from the “stands” that included volunteers, registrants, sustaining members and speakers. October through the end of December was busy starting TAPS 2022 Planning Committee but I was able to steal 2<sup>nd</sup> quietly. January through March getting to third base was a little iffy with all kinds of first time events, meetings, hard decisions but managed to get to 3<sup>rd</sup> base because my great coach (President-Elect) was telling me to take 3<sup>rd</sup> base. April through June 24<sup>th</sup>. That's another story. I didn't think home plate was going to happen some days but that team behind me got me there


and we as a team scored a great win for the PD (at least I feel that way). So in my book we won the game for 2021-2022 maybe not finishing with a perfect game but we worked hard, we practiced and we were always a team.

The World is Enough with your paralegal presence my wonderful Board and the awesome PD members (Active, Associate, Student, Subscribing, Emeritus and Sustaining)

Thank you all and remember...Paralegal Presence is always out there, we just have to keep making it happen.

## Susi Boss

Immediate Past President  
2021-2022



State Bar of Texas  
Paralegal Division

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**Post-Judgment Turnover Receiverships**

You have a judgment, now what? A discussion of the remedy available to judgment creditors of post-judgment turnover receiverships under Chapter 31 of the Texas Civil Practice and Remedies Code.



# Board of Directors

## QUARTERLY BOARD MEETING SUMMARY

### Fall 2022

Submitted by President, Lisa Pittman | [president@txpd.org](mailto:president@txpd.org)

The Incoming Board of Directors met on Friday, June 24, 2022 and Saturday, June 25, 2022 in Dallas, Texas.

#### Meet your 2022-2023 Board of Directors and PD Coordinator

President – Lisa Pittman  
President-Elect – Joncilee Miller, ACP  
District 1 and Parliamentarian – Kim Goldberg, TBLS-BCP  
District 2 – Heather Ulliman  
District 3 – Wayne Baker, Jr., RP  
District 4 and Secretary – Alice Lineberry, PLS, CP  
District 5 – Pearl Garza  
District 7 – Erica Anderson, ACP  
District 10 and Treasurer – Shannon Shaw  
District 11 – Stacey Marquez  
District 12 – Pamela Snavelly, ACP  
District 14 – Maria Sturdy  
District 15 – Arturo Ortiz  
District 16 – Vacant  
Paralegal Division Coordinator  
Rhonda Brashears, CP, TBLS-BCP

President Pittman shared her plans and goals for 2022-2023. Lisa's vision for this year is "**Perseverance**" to encourage the Board of Directors as well as the membership to be active in the legal community and the Paralegal Division. She welcomes hearing from the members about suggestions, comments and recommendations to bring to the Board.

The Board of Directors and Committee Chairs are hard at work for you. Please reach out to them if you have any questions or are interested in learning more about how to serve on a committee or to volunteer. Their contact information is on the website for the Executive Committee and the District Directors.

#### Here are some points of interest from the Board Meeting:

**TAPA 2022** – TAPS will be in Fort Worth, Texas, September 28<sup>th</sup> – 30<sup>th</sup>. The lineup includes some great speaker and social events, so be sure to plan to attend TAPS!

**CLE Forms** – Be sure to **KEEP YOUR CLE** certificates of attendance so that if you are chosen for the membership renewal spot audit, you will be prepared! It is recommended that you keep your CLE certificates of attendance for two years. You will want to keep your CLE records updated on the PD website.

**Membership** – Encourage your fellow paralegals that are not members of the PD to join. And don't forget to renew your membership to continue enjoying all the member benefits available.

**Paralegal Pulse and TPJ** – The Paralegal Pulse is emailed out monthly and the TPJ is emailed on a quarterly basis. Please open and read them as there is so much information contained in both. And remember to check out the Paralegal Pulse for what is happening in your District and across the state.



## MEMBER BENEFITS

- Subscription to the National Paralegal Reporter
  - Access to CLE and on-demand seminars with member pricing
  - Support and resources to work toward paralegal certifications
  - Discounts on educational programs
  - Connection to other paralegals through regional and national meetings
- ... and much more!



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# MENTOR PROGRAM

**BE A MENTOR | HAVE A MENTOR**

## **Protégés:**

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

## **Mentors:**

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

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

## **SIGN UP TODAY**

For more information contact:  
[mentorprogram@txpd.org](mailto:mentorprogram@txpd.org)

# RECOGNITION OF THE 2022-2023 COMMITTEE CHAIRS,

## Ad-Hoc Committee Chairs and State Bar of Texas Representatives

### Committees

#### Immediate Past President/Historian

Susi Boss

Annual Meeting Committee

Chair: Lisa Pittman (President)

#### Continuing Education Committee

Chair District CLE: Jenna Earhart, CP

Board Advisor: Alice Lineberry, PLS, CP, District 4

#### Online CLE

Chair: Amy Rainwater, TBLS-BCP, PHP (Interim)

Board Advisor: Pearl Garza, District 5

#### Elections Committee

Chair: Melanie Langford, ACP

Board Advisor: Maria Sturdy, District 14

#### Membership Committee

Chair: Mona Tucker, ACP

Board Advisor: Shannon Shaw, District 10

#### Professional Development Committee

Chair: Michele Boerder, CP, TBLS-BCP

Board Advisor: Wayne Baker, RP, District 3

#### Professional Ethics Committee

Chair: Ellen Lockwood, ACP, RP®

Board Advisor: Erica Anderson, District 7

#### Public Relations Committee

Chair: Kerri Alexander

Board Advisor: Stacey Marquez, District 11

#### Publications Committee

Chair: Rhonda J. Brashears, CP, TBLS-BCP (Interim)

Board Advisor: Kim Goldberg, TBLS-BCP, District 1

#### TPJ Editor

Rhonda J. Brashears, CP, TBLS-BCP (Interim)

#### TPJ Advertising

PD Coordinator: Rhonda J. Brashears, CP, TBLS-BCP

#### Procedures Manual Committee

Chair: Joncilee H. Miller, ACP (President-Elect)

### AD-HOC COMMITTEES

#### Ambassador Ad Hoc Committee

Chair: Susi Boss

Board Advisor: Arturo Ortiz, District 15

#### E-Group Policy Ad Hoc Committee

Chair: Jay Williams, TBLS-BCP

Board Advisor: Pearl Garza, District 5

#### Governing Documents Review Ad-Hoc Committee

Chair: Javan Johnson, ACP, TBLS-BCP

Board Advisor: Pamela Snively, ACP, District 12

#### Ethics Handbook Ad Hoc Committee

Chair: Ellen Lockwood, ACP, RP®

Board Advisor: Erica Anderson, ACP, District 7

#### Leadership Development Ad Hoc Committee

Chair: Susi Boss

Board Advisor: Kim Goldberg, TBLS-BCP, District 1

**Member Renewal Spot Audit Committee**

Chair: Patricia Giuliano

Board Advisor: Pamela Snavelly, ACP, District 12

**Mentor Program Ad Hoc Committee**

Chair: Gabby Warner

Board Advisor: Alice Lineberry, PLS, CP, District 4

**Paralegal Pulse-E-Newsletter**

Chair: Javan Johnson, ACP, TBLS-BCP

Board Advisor: Pamela Snavelly, ACP, District 12

**Pro Bono Ad Hoc Committee**

Chair: Monty Mayes

Board Advisor: Heather Ulliman, District 2

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**State Bar of Texas Legal Services to the Poor in Civil Matters**

Representative: Megan Goor, TBLS-BCP

**State Bar of Texas Pro Bono Workgroup**

Representative: Stephanie Sterling, TBLS-BCP

**State Bar of Texas Unauthorized Practice Of Law Committee-Northern Region District 6**

Representative: Eugene Alcala

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Representative: Megan Goor, TBLS-BCP

**Texas Judicial Committee On Information Technology (JCIT)**

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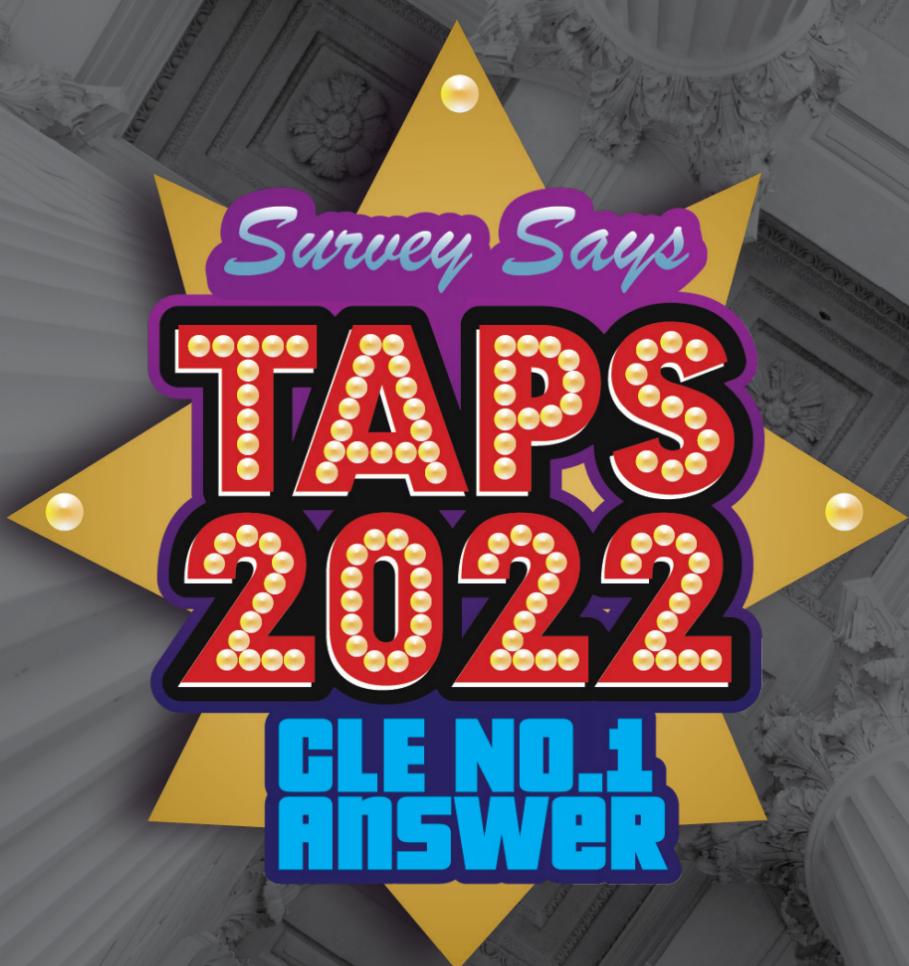
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