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President's Message

Texas Paralegal Journal Fall 2022



President's **MESSAGE**

With a very successful TAPS 2022 behind us we look forward to TAPS 2023 in Frisco, Texas.

The TAPS Committee will meet in January to begin the process of making sure that you have great speakers and socials. If you have suggestions as to areas of law and speakers you would like to have, please let us know.

I hope that you all enjoyed your
Paralegal Day celebrations in your
Districts. I was able to attend District
14's Paralegal Day joint event with
the Northeast Texas Association
of Paralegals (NTAP) via Zoom with
speaker Shawn Latchford, District
12's Paralegal Day joint event with the
Denton County Paralegal Association
(DCPA) at the Fortunata Winery
and District 2's Paralegal Day joint

event with Dallas Area Paralegal Association (DAPA), J.L. Turner Legal Association-Paralegal Section, and the North Texas Paralegal Association at the Arts District Mansion with Keynote Speaker, Krisi Kastl, President of the Dallas Bar Association. I enjoyed each event and thank you all for the invites!

I along with a few fellow paralegals had the honor of being presented with the "Denton County Paralegal Day Proclamation" that was presented at the Commissioner's Court on October 25, 2022, on behalf of all Denton County paralegals and members of the Paralegal Division for our contributions by providing valuable skills and essential services to the legal community. I am so proud and honored for all our fellow paralegals to be recognized with the Proclamation.

Your Directors have been working hard since the last board meeting. They are working on social events, CLEs and making sure that each District is represented for all the members.

We are always looking for participants in the Mentor/Protégé Program. If you are interested please contact us at: mentorprogram@txpd.org.

Encourage a non-member paralegal to join the PD.

Thank you to all the members, volunteers, vendors and attorneys that support the PD.

PLEASE DON'T FORGET TO SAVE YOUR CLE CERTIFICATES!

Lisa Pittman
President

Editor's Note

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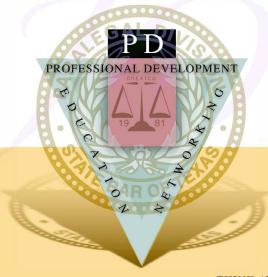
Editor's **NOTE**

Paralegal Division members as you open this issue of the Texas Paralegal Journal we will be full force into the holiday season and will quickly roll into a new year - 2023! Can you believe it? The Paralegal Division is continuously looking for ways to better serve our members by providing professionalism, networking and excellent CLE opportunities. TAPS 2022 in Fort Worth was a success on all levels. We had an excellent turnout of both attendess and vendors. We had over 60 speakers from the metroplex area that provided over 13 hours of CLE. Thank you to the TAPS Planning Committee for your hard work! The TAPS 2023 Planning Committee will meet in January to begin the plans for TAPS 2023 which will takeplace in Frisco on September 26-28, 2023. Put this date on your calendar! Other great benefits for Paralegal Division members is the monthly e-newletter — The Paralegal Pulse! If you are not receiving your copy, then log into your Paralegal Division account at txpd.org and go to My Account to update your profile

in 'Edit My Profile' with your preferred emails to make sure you are getting the most out of your member benefits. The same for the PD e-Group, this is a hit with our members. Make sure you have your e-Group turned on in your My Account profile. I believe I mentioned networking. We have a PD Facebook page as well as a Facebook page for every District. Make sure you are a part of these! These are just a few of the wonderful member benefits. Oh and if you are not a member, our pro-rated membership time starts December 1. See the website www.txpd.org under Membership Applications tab for details.

Again, we are in the holiday season. I hope yours is a blessed one with many wonderful memories. I hope that the new year brings many opportunities!

Rhonda J. Brashears, CP, TBLS-BCP



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

PD provides many benefits for career growth:

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District Director Election

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IF THE DEVIL DANCED (IN EMPTY POCKETS): ADDRESSING LIABILITIES

I. THE PROBLEM OF DEBT IN DIVORCE

If the devil danced in empty pockets, he'd have a ball in mine
With a nine-foot grand, a ten-piece band and a twelve-girl chorus line.
I'd raise some loot in a three-piece suit, give 'em one dance for a dime.
If the devil danced in empty pockets, he'd have a ball in mine.
They say debt is a bottomless pit where the devil likes to play.
I'd sell my soul to get out of this hole, but there'd be hell to pay.

A. Definitions of "Debt" and "Liability"

Before a song carries us away, what is a debt? How is a debt different from a liability? This paper will use both terms, but they differ in meaning.

The Supreme Court defined the two terms as follows, with "debt" limited to monetary obligations imposed by contract and "liability" having the broader definition, that of any obligation to pay.

A "debt," according to Webster, is "that which is due from one person to another, whether money, goods, or services; that which one person is bound to pay

to another or to perform for his benefit; that of which payment is liable to be exacted; due; obligation; liability."

The courts of this state define the words "debt" and "liability," as sued in the Constitution and statutes, in a general, and not in a restricted, sense. In Barber v. City of East Dallas, 83 Tex. 147, 18 S.W. 438, 439, it was said: "in common parlance the word 'debt' is sometimes used to denote any kind of a just demand, and has been differently defined, owing to the subject-matter of the statutes in which it has been used; and while ordinarily

it imports a sum of money arising upon a contract, express or implied, in its more general sense it means that which one person is bound to pay to or perform for another." In McNeal v. City of Waco, 89 Tex. 83, 33 S.W. 322, 324, this court said that: "The word 'debt,' as used in the constitutional provisions above quoted, means any pecuniary obligation imposed by contract.

It seems from the authoritative definitions of the two words "debt" and "liability" that the word "liability" has a more comprehensive meaning than the word "debt." Webster defines "liability" as follows: "That which one is under obligation to pay, or for which one is liable." In the case of Cochran et al. v. United States, 157 U.S. 286, 296, 15 S.Ct. 628, 632, 39 L.Ed. 704, the court said: "We know of no definition of the word 'liability,' either given in the dictionaries or as used in the common speech of men, which restricts it to such as are absolute, or excludes the

^{1&}quot;If The Devil Danced (In Empty Pockets)" written by Ken Spooner and Kim Williams and sung by Joe Diffie. https://www.azlyrics.com/lyrics/joediffie/ifthedevildancedinemptypockets.html.

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idea of contingency. In fact, it is more frequently used in the latter sense than in the former, as when we speak of the liability of an insurer or a common carrier, or the liability to accidents or to errors."

Reconstruction Fin. Corp. v. Gossett, 111 S.W.2d 1066, 1073-74 (Tex. 1938).

The hazy, inexact nature of these definitions set the tone for the topic of this paper, for the strategies for addressing liabilities often prove to be imprecise as well. While better strategies may exist in a suit, often there is no "good" strategy.

B. What Must (or Can) a Court Do with Debts and Liabilities?

Liabilities in divorce pose a challenge to the family lawyers. Whereas assets can be awarded to a party, that is not truly the case with liabilities. A court's authority to address liabilities is limited and the award of a liability to one party does not divorce the other from the liability, if the other party was married to the liability in the first place.

Court's Authority to Award Liabilities

In a decree of divorce or annulment, the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage. Tex. Fam. Code § 7.001. Trial courts can only divide community property, and the

phrase "estate of the parties" encompasses the community property of a marriage, but does not reach separate property. Pearson v. Fillingim, 332 S.W.3d 361, 363 (Tex. 2011) (citing Eggemeyer v. Eggemeyer, 554 S.W.2d 137, 139 (Tex. 1977)). The parties' liabilities are factors to be considered in making a just and right division of property. In re S.A.A., 279 S.W.3d 853, 857 (Tex. App. - Dallas 2009, no pet.). As we will see below, however, liabilities are not community property; they are not part of the community estate.

It can be argued that while a court may consider liabilities in the division of the marital estate, the court cannot "award" a liability to a party. Neither section 7.001 nor any other section in Chapter 7 expressly gives a court the authority to divide liabilities between the parties without their consent. But see Tex. Fam. Code 7.006 (court may approve terms of an agreement incident to divorce that concern division of liabilities).

A court in a divorce cannot interfere with a creditor's right to collect from a debtor. It is well-settled law in Texas that divorce courts cannot disturb the rights of a creditor to collect from either of the divorcing parties on a joint obligation. Texas courts have consistently held that

a division of the community estate may not prejudice the rights of a creditor to satisfy a community debt. *Blake v. Amoco Fed. Credit Union*, 900 S.W.2d 108, 111 (Tex. App.—Houston [14th Dist.] 1995, no writ).

A court clearly has the authority to approve a contract between the divorcing spouses that addresses their liabilities, including indemnification provisions. To promote amicable settlement of disputes in a suit for divorce or annulment, the spouses may enter into a written agreement concerning the division of the property and the liabilities of the spouses and maintenance of either spouse. Tex. Fam. Code 7.006(a). If the court finds that the terms of the written agreement in a divorce or an annulment are just and right, those terms are binding on the court. If the court approves the agreement, the court may set forth the agreement in full or incorporate the agreement by reference in the final decree. Tex. Fam. Code § 7.006(b). If the court finds that the terms of the written agreement in a divorce or annulment are not just and right, the court may request the spouses to submit a revised agreement or may set the case for a contested hearing. Tex. Fam. Code § 7.006(c).

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But what if there is no agreement incident to divorce? May a court order one spouse to indemnify the other without an agreement? An argument would be that indemnification is a contract, and a court may not impose a contract on a party. Such a contract would be made without consideration and arguably under duress.

Appellate courts have found the division of liabilities and the imposition of court-imposed indemnification provisions to be valid. For example, a divorce court also has authority and discretion to impose the entire tax liability of the parties on one spouse. In re S.A.A., 279 S.W.3d 853, 857 (Tex. App.—Dallas 2009, no pet.) In Lynch v. Lynch, 540 S.W.3d 107 (Tex. App.-Houston [1st Dist.] 2017, pet. denied), the divorce decree contained specific indemnification provisions, ones corresponding to particular obligations assigned to the parties in the decree, such as "[T]he husband shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold the wife and her property harmless from any failure to so discharge these items: [specific debts listed assigned to Michael]." The appellate court found the specific indemnity provisions were tied to the decree's property division and were consistent with statutory provisions that allow the trial court, in post-decree proceedings, "[to] render further orders to enforce the division of property made or approved in the decree of divorce" and "[to] render a money judgment for the damages caused by [the] failure to comply" with the decree. Id. at 134 (citing Tex. Fam. Code §§ 9.006, 9.010. In other words, a trial court may include decretal language appropriate for a post-divorce enforcement into the decree itself.

2. Indemnification Provisions

The more common scenario for an indemnification dispute involves three separate and distinct parties: plaintiff (party one), indemnitee (party two), and indemnitor (party three). Ingersoll–Rand Co. v. Valero Energy Corp., 997 S.W.3d 203, 208 (Tex. 1999). To determine the correct accrual date of an indemnity claim a court looks to the contract's indemnity provision. There are two types of indemnity agreements, those that indemnify against liabilities and those that indemnify against damages. Broad language that holds the indemnitee "harmless"

against "all claims" and "liabilities" evidences an agreement to indemnify against liability. Such provisions entitle the indemnitee to recover when the liability becomes fixed and certain, as by rendition of a judgment, whether or not the indemnitee has yet suffered actual damages, as by payment of a judgment. *Id.* at 207.

Indemnification provisions in divorce decrees typically are agreements to indemnify against liability, rather than damages. See Stubbs v. Stubbs, No. 10-13-00393-CV, 2014 WL 4055988, at *2 (Tex. App.—Waco July 14, 2014, no pet.) (citing Ingersoll–Rand Co., 997 S.W.3d at 207). As such, "a claim under a liability indemnification clause does not accrue, and thus is not mature, until the indemnitee's liability to the party seeking damages becomes fixed and certain." Id. (quoting Ingersoll–Rand Co., 997 S.W.3d at 208).

In Stubbs, the court found the indemnification provision in the divorce decree provided that if a claim or proceeding was brought against the person not assuming a debt, the other party would indemnify the person from all damages resulting from the claim regardless of whether or not the claim was well-founded. The filing of the nonsuit in a suit by a creditor against the indemnitee terminated the claim against indemnitee and at that time fixed the indemnitee's damages as a result of the claim, which was the amount of the attorney's fees the indemnite paid. Based on the language of the indemnity provision, the trial court did not err by awarding the indemnitee the amount she had expended for attorney's fees as damages. *Id.*

While an indemnification provision is a good first line of defense, its protection is limited. First, the liability must become fixed and certain. If the indemnifier fails to pay the liability, the indemnitee must sue the indemnifier, be awarded a judgment, and find sufficient non-exempt assets of the indemnifier to collect the judgment.

Of note, the court in *Lynch* struck down general indemnification provisions, provisions not limited to the debts, obligations, and liabilities addressed in the decree, because there was no evidence to support that general indemnification order. *Lynch*, 540 S.W.3d at 134. *See also Houston v. Thorpe*, No. 04-19-00469-CV, 2020 WL 3547988,

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at *6 (Tex. App.—San Antonio July 1, 2020, no pet.) (court abused discretion including indemnification provision in absence of evidence). The lesson is not to assume that general indemnification language common to agreed decrees may be imposed in a contested suit without any pleadings for the general indemnification language and without the introduction of evidence to support the requested relief.

That lesson equally applies to specific indemnification provisions: in your pleadings and summary of relief requested, ask for specific indemnification provisions and introduce evidence to justify the request. That evidence should show why the indemnification provisions are important for an equitable division of the parties' estate. At the least, show the court that without these provisions, the division of the liabilities would have little or no meaning.

In the end, however, any representation that a liability is awarded to a party is misleading. Liabilities stick to the people and property subject to them. Short of indemnification provisions between spouses, it may appear there is little parties can do to protect themselves. Indemnification provisions provide small help when the indemnifier has no money in the present and little likelihood of having funds in the future.

Techniques do exist to minimize the risk to clients. These techniques include the presentation of the liability issues to gain the best results in negotiation and trial, as well as ideas to protect a party in addition to indemnification provisions. This paper will discuss these techniques after it examines the nature of the Texas's community property system and which types of property can be subject to specific kinds of debts.

II. COMMUNITY PROPERTY AND SEPARATE PROPERTY

The first step to understanding liabilities is understanding property. Family law attorneys must possess a solid grasp of separate and community property, including sole management community property and joint management community property. The following is a (relatively) brief summary of community and separate property.

A. Community Property

Community property consists of the property, other than separate property, acquired by either spouse during marriage. Tex. Fam. Code § 3.002. Property possessed by either spouse during or on dissolution of marriage is presumed to be community property. Tex. Fam. Code § 3.003(a).



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Each item of community property falls under the management, control, and disposition of one or both spouses. During marriage, each spouse has the sole management, control, and disposition of the community property that the spouse would have owned if single, including:

- (1) personal earnings;
- (2) revenue from separate property;
- (3) recoveries for personal injuries; and
- (4) the increase and mutations of, and the revenue from, all property subject to the spouse's sole management, control, and disposition.

Tex. Fam. Code § 3.102(a). Community property over which a spouse has the sole management, control and disposition is known as special community property. Moss v. Gibbs, 370 S.W.2d 452, 455 (Tex. 1963). It is not necessary that one spouse approve or agree with the dispositions made by the other spouse of that other spouse's special community property.

Horlock v. Horlock, 533 S.W.2d 52, 55 (Tex. Civ. App.—Houston [14th Dist.] 1975, writ dism'd w.o.j.).

Except for the sole management community property of each spouse, community property is subject to the joint management, control, and disposition of the spouses unless the spouses provide otherwise by power of attorney in writing or other agreement.Tex. Fam. Code § 3.102(c). If community property subject to the sole management, control, and disposition of one spouse is mixed or combined with community property subject to the sole management, control, and disposition of the other spouse, then the mixed or combined community property is subject to the joint management, control, and disposition of the spouses, unless the spouses provide otherwise by power of attorney in writing or other agreement. Tex. Fam. Code § 3.102(b).

B. Separate Property

The Texas Constitution establishes separate property.

All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property; provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; spouses also may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned or which thereafter might be acquired by only one of them, shall be the separate property of that spouse; if one spouse makes a gift of property to the other that gift is presumed to include all the income or property which might arise from

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that gift of property; spouses may agree in writing that all or part of their community property becomes the property of the surviving spouse on the death of a spouse; and spouses may agree in writing that all or part of the separate property owned by either or both of them shall be the spouses' community property.

Tex. Const. art. XVI, § 15. Each spouse has the sole management, control, and disposition of that spouse's separate property. Tex. Fam. Code § 3.101.

Although it does not address the creation of separate property through written agreements, section 3.001 of the Family Code sets out a succinct definition of separate property useful for most circumstances. A spouse's separate property consists of:

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

Tex. Fam. Code § 3.001.

As permitted by the Constitution, people about to marry and spouses may create through written agreements separate property that otherwise would be community property. Tex.

Const. art. XVI, § 15. Among

other agreements, the parties to a premarital agreement may contract with respect to the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located. Tex. Fam. Code § 4.003(a)(1). Under Family Code section 4.102, spouses may, through a partition or exchange agreement, transfer to one another property or property interests, which then become that spouse's separate property. Tex. Fam. Code § 4.102. The partition or exchange of property may also provide that future earnings and income arising from the transferred property shall be the separate property of the owning spouse. Id. Indeed, at any time, the spouses may agree that the income or property arising from the separate property that is then owned by one of them, or that may thereafter be acquired, shall be the separate property of the owner. Tex. Fam. Code § 4.103.

Also as permitted by the Constitution, spouses may agree that all or part of the separate property owned by either or both spouses is converted to community property. Tex. Const. art. XVI, § 15; Tex. Fam. Code § 4.202.

For premarital agreements, partition or exchange agreements, and agreements to convert separate property into community property, "property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings. Tex. Fam. Code § 4.001.

C. Determining the Character of Property

The characterization of property as either community or separate is determined by the inception of title to the property. Boyd v. Boyd, 131 S.W.3d 605, 612 (Tex. App.—Fort Worth 2004, no pet.). Inception of title occurs when a party first has a right of claim to the property by virtue of which title is finally vested. Id. The major consideration in determining the characterization of property as community or separate is the intention of spouses shown by the circumstances surrounding the inception of title. Id.

In order to overcome the community presumption, the burden is on the spouse claiming certain property as separate to trace and clearly identify the property claimed to be separate. Id.; see Estate of Hanau v. Hanau, 730 S.W.2d 663, 667 (Tex. 1987) (citing Tarver v. Tarver, 394 S.W.2d 780, 783 (Tex. 1965)). The burden of tracing is a difficult, but not impossible, burden to sustain. *Boyd*, 131 S.W.3d at 612 (citing Latham v. Allison, 560 S.W.2d 481, 484 (Tex. Civ. App.-Fort Worth 1977, writ ref'd n.r.e.)). Tracing involves establishing the separate origin of the property through evidence showing the time and means by which the spouse originally obtained possession of the property. ld. (citing Ganesan v. Vallabhaneni, 96 S.W.3d 345, 354 (Tex. App.-Austin 2002, pet. denied)).

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The degree of proof necessary to establish that property is separate property is clear and convincing evidence. Tex. Fam. Code § 3.003(b). "Clear and convincing evidence" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. Tex. Fam. Code §§ 1.001(b); 101.007. This is an intermediate standard, falling between the preponderance standard of ordinary civil proceedings and the reasonable doubt standard of criminal proceedings. In Interest of G.M., 596 S.W.2d 846, 847 (Tex. 1980).

The issue of whether the property is separate or community property is determined by the facts that, according to rules of law, give character to the property. Robles v. Robles, 965 S.W.2d 605, 615 (Tex. App.-Houston[1st Dist.] 1998, pet. denied)(op. on reh'g). Separate property will retain its character through a series of exchanges so long as the party asserting separate ownership can overcome the presumption of community property by tracing the assets on hand during the marriage back to property that, because of its time and manner of acquisition, is separate in character. Cockerham v. Cockerham, 527 S.W.2d 162, 168 (Tex. 1975). However, if the evidence shows that separate and community property have been so commingled as to defy resegregation and

identification, the community presumption prevails. *Hanau*, 730 S.W.2d at 667.

When tracing separate property, it is not enough to show that separate funds could have been the source of a subsequent deposit of funds. Boyd, 131 S.W.3d at 612 (citing Latham, 560 S.W.2d at 485). Moreover, as a general rule, mere testimony that property was purchased with separate funds, without any tracing of the funds, is insufficient to rebut the community presumption. Boyd, 131 S.W.3d at 612; Zagorski v. Zagorski, 116 S.W.3d 309, 316 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (op. on reh'g); Bahr v. Kohr, 980 S.W.2d 723, 728 (Tex. App.-San Antonio 1998, no pet.); McElwee v. McElwee, 911 S.W.2d 182, 188 (Tex. App.—Houston [1st Dist.] 1995, writ denied). Any doubt as to the character of property should be resolved in favor of the community estate. Boyd, 131 S.W.3d at 612 (citing Akin v. Akin, 649 S.W.2d 700, 703 (Tex. App.-Fort Worth 1983, writ ref'd n.r.e.)).

III. SPOUSES AND PROPERTY SUBJECT TO LIABILITIES ARISING BEFORE AND DURING MARRIAGE

A. The Community Estate and the Separate Estates are Property, not Entities

The Family Code establishes which spouses and which estates (i.e., a spouse's separate estate or the community estate) are liable for the payment of a liability. Do not, however, try to simplify this process by giving liabilities labels

and then believing the labels determine which spouses or estates are subject to paying for those liabilities.

An extremely common mistake made by family law practitioners, judge, and appellate courts is to treat the community estate and each spouse's separate estate as entities. This language finds its way into court rulings and appellate opinions to confuse the matter even more, particularly when discussing debts. In a March 1, 2021, memorandum to the Reimbursement Subcommittee of the Pattern Jury Charges - Family and Probate Committee, Chris Nickelson described the source of the problem as follows: The term "community debt" came into the lexicon of Texas lawyers during the period known as coverture when the husband managed all community and separate property of the spouses and was personally liable for all community debts. See Tom Featherston and Allison Dickson, Marital Property Liabilities, 73 Tex. B.J. 16-17 (2010). After coverture ended in the 1960s, the term "community debt" lived on as a short-hand way of reducing a simple but wordy idea to a more convenient phrase for legal discussions. Joseph W. McKnight, Family Law: Husband and Wife, 37 Sw. L.J. 65, 76-77 (1983). When a lender loans money to a spouse but the lender does not agree to look only to the spouse's separate property for repayment, then the borrowed money or asset purchased with borrowed money is characterized

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as community property. Id. The term "community debt," was used to reduce this simple but wordy idea into a neat phrase which, when properly used, meant community property was acquired through a debt transaction in which the lender did not agree to have recourse, in the event of default, only against the separate property of a spouse, as opposed to a "separate debt" transaction wherein separate property was acquired through a debt transaction where the lender did agree to have recourse only against separate property of a spouse in the event of default. In short, the term "community debt," when properly used after the period of coverture ended, was a term which was used to characterize property, not debt. McKnight, Family Law: Husband and Wife, 37 Sw. L.J. 65, 76-77;

Featherston, Marital Property Liabilities, 73 Tex. B.J. 16-20; see also Tedder v. Gardner Aldrich, 421 S.W.3d 651, 654-55 (Tex. 2013) (quoting Professor McKnight).

The Supreme Court

admitted that its opinion in Cockerham v. Cockerham made the problem worse: Confusion over the significance of "community debt" has been ascribed to our opinion in Cockerham v. Cockerham, where we said that "debts contracted during marriage are presumed to be on the credit of the community and thus are joint community obligations, unless it is shown the creditor agreed to look solely to the separate estate of the contracting spouse for satisfaction." We immediately added: "[T]he fact that the debts are community liabilities would not, without more, necessarily lead to the conclusion they were joint liabilities. Characterization

of the debts as community liabilities is only one aspect of the circumstances to be considered in determining whether the debts are joint." But the first statement, and the entire analysis, has proved misleading.

Tedder, 421 S.W.3d at 654 (citations omitted).

The Tedder Court included the following lengthy quote from Professor McKnight in its opinion: Much of the judicial discussion of "community debt" is based on the erroneous supposition that all "community debts" are equally shared by the spouses whether they are both makers of the debt or not. That supposition is not warranted by the basic principles of Texas law. Apart from the context of acquiring necessaries, debt incurred by only one spouse does not affect the other spouse at all except that it makes the nonobligated spouse's share of



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community property liable for payment if the property sought for payment is subject to the sole or joint management of the spouse who incurs the debt.

It is high time that the community debt argument be put to rest. The phrase "community debt" has long been useful in characterizing borrowed money or property that a spouse buys on credit. If the lender or seller does not specifically look to the borrower's or buyer's separate property for payment, it is clear that a community debt has been incurred, and thus that the money borrowed or property bought is community property. But to take the phrase out of this context, as well as to say that the designation of such a debt as "community" makes both spouses liable for it (when only one of them has contracted it), is clearly contrary to the express terms of section 5.61[of the Family Code, currently Section 3.202]. Under Texas law as amended and recodified in 1969, a community debt means nothing more than that some community property is liable for its satisfaction.

Id. at 654-55 (citations omitted). The Supreme Court agreed with the statements that marriage itself does not create joint and several liability between the spouses and that a spouse's liability for debts incurred by or for the other spouse instead is determined by statute. Id. at 655.

Both separate property and community property are property; neither is an entity. See Tex. Fam. Code §§ 3.001, 3.002. The community estate therefore

cannot "owe" money like a person or entity could. (Neither can a separate estate.) The Supreme Court now has made that position clear.

The Tedder approach recognizes that neither "community property" nor the "community estate" is an entity that can own property or incur debt. Community property is simply a form of co-ownership. Only the spouses themselves can incur debt. A debt is the debt of one spouse, the debt of the other spouses.

Tom Featherston, "Marital Property Liability: Post Tedder," Texas Family Law Section, Section Report, p.12 (Fall 2017). We should therefore rid ourselves of statements such as "the community estate owns the house," which instead should read "the house is part of the community estate" or "the house is community property." Similarly, the incorrect statements "that is a liability of the community estate" or "that is community debt" should be restated to state the liability was incurred during the marriage with the additional information of who incurred the liability and why. The how and the why determine who and what property will be liable for the debt's payment.

B. Determining Who and What Property is Liable for a Debt

Family Code Chapter 3, Subchapter C, sets out the marital property liabilities. The language of this subchapter can be confusing. To assist

in understanding, this paper

includes an Appendix A, which summarizes the rules.

The sections of Subchapter C tend to state when certain marital property is not liable for a debt, rather than stating when that property is liable. The general rules regarding the liability of community property and separate property are good examples. Except as provided in Subchapter C, community property is not subject to a liability that arises from an act of a spouse. Tex. Fam. Code § 3.201(b). Similarly, a spouse's separate property is not subject to liabilities of the other spouse, unless both spouses are liable by other rules of law. Tex. Fam. Code § 3.202(a).

1. Personal Liability

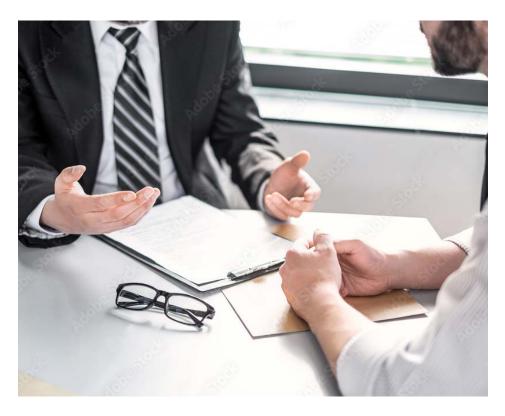
Subchapter C does not state when a person is personally liable for a debt incurred by that person. It follows that a person is personally liable for debts incurred by that person. Similarly, a person's separate property would be liable for the debts for which that person is personally liable. Subchapter C states when a person is not personally liable for a debt incurred by the person's spouse. A person is personally liable for the acts of the person's spouse only if:

- (1) the spouse acts as an agent for the person; or
- (2) the spouse incurs a debt for necessaries as provided by Family Code Chapter 2, Subchapter F.

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Tex. Fam. Code § 3.201(a). If a spouse is not personally liable for a debt, the creditor may not reach that spouse's separate property to satisfy the debt. *Mock v. Mock*, 216 S.W.3d 370, 374 (Tex. App.— Eastland 2006, pet. denied) (citing Tex. Fam. Code §§ 3.201; 3.202).

A spouse does not act as an agent for the other spouse solely because of the marriage relationship. Tex. Fam. Code § 3.201(c). To determine whether a debt is only that of the contracting party or if it is instead that of both spouses, it is necessary to examine the totality of the circumstances in which the debt arose. Cockerham, 527 S.W.2d at 171. Of particular importance in Cockerham was the consideration of implied assent to the debt by the noncontracting party. Id. The liability of a person for the person's spouse incurring a business debt may turn on the person's involvement with the business. See Patel v. Kuciemba, 82 S.W.3d 589, 595 (Tex. App.-Corpus Christi 2002, pet. denied). A person suing as a third-party beneficiary of a contract signed by the person's spouse may be bound by all the terms of the contract even if the person did not sign the contract. See Nationwide of Bryan, Inc. v. Dyer, 969 S.W.2d 518, 520 (Tex. App.-Austin 1998, no pet.).



Subchapter F of Chapter 2, the reference in Section 3.201(a) to "a debt for necessaries," has only one section, which states,

- (a) Each spouse has the duty to support the other spouse.
- (b) A spouse who fails to discharge the duty of support is liable to any person who provides necessaries to the spouse to whom support is owed.

Tex. Fam. Code § 2.501. A spouse's necessaries are things like food, clothing, and habitation—that is, sustenance. *Tedder*, 421 S.W.3d at 656. The obligation which the law imposes on spouses to support one

another and on parents to support their children is not considered a "debt" within Article I, section 18, of the Texas Constitution but a legal duty arising out of the status of the parties. Ex parte Hall, 854 S.W.2d 656, 658 (Tex. 1993).

In a similar manner, a parent has the duty to support his or her child, including providing the child with clothing, food, shelter, medical and dental care, and education. Tex. Fam. Code § 151.001(a)(3). The duty of a parent to support his or her child exists while the child is an unemancipated minor and continues as long as the child is fully enrolled in a secondary school in a program leading toward a high school diploma and

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complies with attendance requirements described by Family Code section 154.002(a)(2). Tex. Fam. Code § 151.001(b). The obligation to support a child is viewed as a legal duty and not as a debt. *In re Henry*, 154 S.W.3d 594, 596 (Tex. 2005).

A creditor of a spouse may choose to agree to look only to the separate property of the spouse to satisfy the debt, in which case neither community property nor the separate property of the other spouse is subject to liability for that debt. We can deduce this rule from reviewing the two general rules of community and separate liability. Except as provided in Subchapter C, community property is not subject to a liability that arises from an act of a spouse, and a

spouse's separate property is not subject to liabilities of the other spouse, unless both spouses are liable by other rules of law. Tex. Fam. Code §§ 3.201(b); 3.202(a). Support also comes from the following statement in Cockerham, although that statement supports the misleading view of a community estate being an entity. See Tedder, 421 S.W.3d at 654. "It is well established that debts contracted during marriage are presumed to be on the credit of the community and thus are joint community obligations, unless it is shown the creditor agreed to look solely to the separate estate of the contracting spouse for satisfaction." Cockerham, 527 S.W.2d at 171.

2. Marital Property Liability While practitioners and appellate opinions have often stated that a community estate is liable for a debt, as discussed above, the community estate is not an entity and "the community estate" is not liable for debts. Community property can be subject to debts, but whether it is subject to those debts depends on whether the community property is one spouse's or another spouse's sole management community property or is joint management

The community property subject to a spouse's sole or joint management, control, and disposition is subject to the liabilities incurred by the spouse before or during marriage. Tex. Fam. Code

community property.



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§ 3.202. For example, if a husband incurs a debt before he marries, the creditor may reach his marital property in satisfaction of the debt, even if that property is jointly managed by his non-debtor wife. Drake Interiors, L.L.C. v. Thomas, 433 S.W.3d 841, 849 (Tex. App.-Houston [14th Dist.] 2014, pet. denied). The community property subject to a spouse's management, whether subject to that management solely by that spouse or jointly with the other spouse, is subject to the spouse's liabilities just like the spouse's separate property. Although either spouse can incur contractual liability that will bind the share of the noncontracting spouse's community property subject to the sole or joint control of the contracting spouse, the noncontracting spouse is not "personally liable" for the obligation. Nelson v. Citizens Bank & Tr. Co. of Baytown, Tex., 881 S.W.2d 128, 131 (Tex. App.—Houston [1st Dist.] 1994, no writ). "Translated into plain English this means that whenever a spouse borrows money without the other spouse's joinder or consent, and the lender does not agree to look to the borrowing spouse's separate estate for repayment, then the borrowing spouse puts his separate property, his sole management community property, and the spouses' joint management community property, at risk

of seizure to repay the debt in the event of default." Chris Nickelson, Memorandum to the Reimbursement Subcommittee of the Pattern Jury Charges – Family and Probate Committee, at p. 9-10 (March 1, 2021).

The community property subject to a spouse's sole management, control, and disposition may be protected from the liabilities of the other spouse. Unless both spouses are personally liable as provided by this Subchapter C, the community property subject to a spouse's sole management, control, and disposition is not subject to any liabilities that the other spouse incurred before marriage. Tex. Fam. Code § 3.202(b)(1). In the same way, unless both spouses are personally liable as provided by Subchapter C, that same community property subject to a spouse's sole management, control, and disposition is not subject to any nontortious liabilities that the other spouse incurs during marriage. Tex. Fam. Code § 3.202(b)(2).

Unfortunately for innocent spouses, all community property is subject to tortious liability of either spouse incurred during marriage. Tex. Fam. Code § 3.202(d).

Thus, if a husband is adjudged negligent during marriage, the entire marital estate is placed at risk—the husband's sole management community

property, the wife's sole management community property, and both spouses' joint management community property. This contrasts with Section 3.202(c), which restricts the types of marital property subject to nontortious liabilities. Under Section 3.202(c), if a husband incurs a debt before or during marriage, the creditor may reach the husband's sole management community property and both spouses' joint management community property—but not the wife's sole management community property.

Drake Interiors, L.L.C. v. Thomas, 433 S.W.3d 841, 850–51 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). A spouse's interest in community property subject to joint management, control, and disposition may be reached to satisfy the liabilities of the other spouse without joinder of both spouses in the suit. Carlton v. Estate of Estes, 664 S.W.2d 322, 323 (Tex. 1983).

Due to the exposure of all community property to a judgment for a tort, it is a good idea to have thorough insurance coverage.

Alternatively—and inviting a different set of risks—prospective spouses can ensure there is little or no community property through a premarital agreement and spouses can execute partition or exchange agreements.

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IV. LIABILITIES IN INVENTORIES AND APPRAISEMENTS

The information in the previous section III of this paper should cause family law attorneys to rethink how they list liabilities in an inventory and appraisement ("I&A"). Gone are the convenient days in which attornevs would list "community debts" and "separate debts" or "debts of the community estate" and "debts of the [Husband's/Wife's] separate estate." In those days, the misunderstandings of attorneys and courts made it seem possible for a spouse to "take" a "community debt" as an offset to a community asset with the seeming assurance that the other spouse would be immune from liability for that debt. Similarly, it seemed as though "separate debts"-usually debts from before the marriage—were solely the responsibility of the spouse who incurred them and about which the other spouse need not worry.

Not only were these simplistic categorizations incorrect, they misled both the court and the divorcing spouses. The agreement of a spouse or an order of the court to "take" a liability incurred during marriage does not limit any existing personal liability of the other spouse to the creditor nor any existing liability of community property or the other spouse's separate property to pay that debt if the liability extends that far. Similarly, the creditor of a liability incurred by a spouse before marriage can go after not only the incurring spouse and the incurring spouse's separate property, but also the non-exempt sole management community property of that spouse and the joint management property of both

spouses. The award of a liability to a spouse does not fix these problems for the other spouse.

The I&A should reflect these realities. Information about each liability should include:

- · Name and address of creditor
- Account number (if applicable)
- Name of each person who incurred the liability
- When liability incurred:
 - Before marriage
 - During marriage
 - Before and during marriage
- · Type of liability:
 - Contractual
 - Tortious
 - Debt for necessaries
 - Debt incurred as agent for [name of spouse]
- Description of liability, including the reasons for its creation
- · Current amount owed

Like most documents in divorce suits, the more thought and information you put into an I&A, the more useful it becomes. This information will permit each party to determine who and what is subject to the liability, provided the party has a sound understanding of which property is separate property, which is special community property, and which is joint management community property. Those answers lie in the descriptions of the property in the I&A. A thorough I&A should provide all the information a party needs to decide which liabilities threaten that party and therefore must be addressed and which impact only the other party or the property likely to be awarded to that party. If there are significant liabilities, the I&A can

even guide which property a spouse should ask to be awarded, avoiding the special community property of the other spouse and joint management community property, both of which would be subject to the other spouse's creditors after divorce.

Be sure to have your client perform a credit report check to learn for which debts the client is liable. The credit report should also show any other liabilities of the client, such as judgments. Annual Credit Report.com (https://www. annualcreditreport.com/) is the federally authorized source for free credit reports. Through this website, anyone can obtain a free copy of that person's credit report every 12 months from each of the three credit reporting companies: Experian, TransUnion, and Equifax. The frequently asked questions tab contains valuable information, such as how to report identity threat.

V. TECHNIQUES OTHER THAN INDEMNIFICATION

While indemnification provisions are a starting point to protect a client from liabilities for which the other spouse should be responsible, as discussed above, an indemnification provision is effective only in certain circumstances. The amount to be indemnified must be worth the time and expense of suing the indemnifier, obtaining a judgment, and collecting the judgment. The indemnifier must either have sufficient non-exempt property (or the prospect of future sufficient non-exempt property) to satisfy a judgment or must be concerned enough about an adverse judgment

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to find the money to make the indemnitee whole. Of course, people with these traits tend to meet their financial obligations, thus never triggering the indemnification provision.

So how can a family law attorney improve the odds that liabilities will not adversely affect the client or the property awarded to the client other than using an indemnification provision?

A. Use the Information in the Inventory and Appraisement

After making the I&A beneficial for analyzing liabilities, use that information. For each liability, ask:

- Is the client personally liable?
 - If so, is the client able and willing to beresponsible for the liability?
- · What property would be liable?
- Does the client want any of that property?
- Should any of that property be awarded to the other party?

This analysis will prove useful for determining which of the following techniques could be appropriate in a case.

B. Eliminate the Liability before the Property Division

If circumstances permit, the best way to address any liability is to eliminate it before or as soon as possible after the property division. Before, during, or upon conclusion of the suit, look for opportunities to pay off liabilities on which your client or property your client wants is liable.



Income Approach

- Is there income that can pay the liability without requiring or violating a temporary order?
- In the alternative, request that the court order the payment of the liability as temporary spousal support.

Sale Approach

- Are there assets the parties would agree to sell to pay off the liability?
- In the alternative, request that the court make orders, particularly temporary orders, to sell property to pay the liability.

To avoid having to follow up after the divorce with the sale of assets, address the payment of the liabilities as early as possible in the case. Elicit the details of debts beginning at the initial consultation. Provide forms that encourage the prospective client to inform you about liabilities. Either require the prospective client to complete these forms before the first meeting or you fill them out for the client during that initial consultation.

If the payment of a liability appears as a form of temporary spousal support, be sure to include all the steps necessary to make the order enforceable by contempt:

- Correct name of the creditor to be paid;
- Address to which the payments must be made;
- Dates each payment must be made;
- · Amount of each payment;
- Required method for making each payment;
- Any identifying information that must accompany the payment, e.q., account number; and
- Statement that the requirement to pay the liability is a form of temporary spousal support.

If the sale of an asset is ordered, whether outright or only if a condition is not met, such as the refinance of a mortgage, take the time—well before mediation or trial—to think through the necessary details. Who will sell the asset: a party, both parties, an auctioneer, or a receiver?

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When must the asset be put up for sale? If the asset is personal property, where must the asset be? What will be the listing price? What will be the sale price at which the parties must accept a bona fide offer? If the parties cannot agree to the listing or sale price, will they agree—or should the court order them—to use an appraiser to set these prices?

If the court omits a necessary detail, the parties may fail to insert that detail in the decree, which could result in the parties coming back to court. Best to get the process set out completely in the mediated settlement agreement and in the original decree than face the question of whether the court is simply clarifying its order to make it enforceable or impermissibly modifying the property division after it lost plenary power to do so.

If the parties agree to accept the first bona fide offer above or equal to a specific price or if there is a schedule for dropping the listing and sale prices the longer the residence is on the market, be sure to memorialize that agreement in an agreement incident to divorce that will not be filed with the court unless it is necessary to enforce its provisions. If that agreement was reached in mediation, be sure not to file the mediated settlement agreement with the court either. The parties should not wreck their chances of getting a better deal by telling the public what their bottom line must be.

C. Take the Liability

If feasible, the next best way to deal with a personal liability in a property division is for the client to choose to be responsible for that liability. If the client has the means of paying the liability, either over time or using assets awarded to the client, the client ensure it is satisfied. The client will not have to worry about the other party failing to pay the liability. The client also may use the client's taking responsibility for the liability to argue for the award of additional assets in the property division.

Taking the liability makes the most sense when the client is the sole party obligated for its payment or when the client must ensure the liability is paid and cannot trust the spouse to have the means or incentive to pay it.

D. Conditional Awards

Although seeming in conflict with the court's duty to divide the community estate, a way to give an opposing party sufficient incentive to pay a debt is to award an asset to the party conditioned on the party paying off a debt, typically the debt secured by the asset, leaving the other party with an ownership interest in the property until then. Conditional awards prove useful when a party wants an asset, but the spouse worries the party will not timely pay the debt secured by that asset, which could hurt the spouse's credit. Conditional awards do not solve all problems, but they give the concerned spouse options if those concerns

prove justified and give the party awarded the asset a stronger incentive to refinance the secured loan.

For example, a wife is awarded the Ford F-150 pickup upon her refinancing within the 90 days of the date of divorce the existing loan secured by that vehicle so that the husband no longer has any obligations under the terms of the existing loan. Until the wife meets those conditions and if she fails to refinance the existing loan in that manner by the 90th day after the date of divorce, the parties are each awarded an undivided one-half interest as tenants in common in the Ford F-150 pickup, subject to future partition. Alternatively, the vehicle could be awarded to the husband if the wife fails to refinance in time. In any event, the husband would not sign the truck title over to the wife or deliver a power of attorney to transfer title unless or until the wife meets the conditions to be awarded the vehicle.

Before using a conditional award for personal property, consider how the party not assuming the loan would be able to gain possession of the property if the party assuming the loan fails to meet the necessary conditions. In what shape would the personal property likely be if the party assuming the loan has to turn it over? Will it likely be trashed or in decent shape? Is the remedy worth the hassle and post-divorce contact with the former spouse?

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Be creative and thorough in devising language enforceable by contempt for the assuming party to surrender possession of the property if the debt is not paid off or refinanced. Conditional awards of personal property can be effective, but they demand careful thought from the attorney. Draft the conditional award and the enforcement language before mediation or trial to ensure all the language you need finds its way into the decree.

Similar language can be used for a residence that has an existing mortgage. The decree can include forced sale language if the deadline to refinance or sell comes and goes. The portion of the decree addressing the party's responsibility for paying the mortgage should include specific language such as:

[Name of party] must pay this loan in full by [date]. If the loan is not paid in full by [date], then [name of party] shall face foreclosure of the real property secured by the loan.

The decree also should include language stating that the party assuming the loan will face a non-judicial foreclosure sale of the property as described in a deed of trust to secure assumption and pursuant to the Texas Property Code. If the party not assuming the loan would want to purchase the secured property at the foreclosure auction, the decree should feature language:

- expressly permitting the non-assuming party that right;
- (2) stating that if the non-assuming party becomes the owner at the foreclosure auction, the non-assuming party may continue making monthly payments on the assumed loan, sell the secured real property, or refinance the secured property; and
- (3) denying the party assuming the loan any profit from the non-assuming party's subsequent sale of the secured real property.

It is critical that the non-assuming party consult with a real estate attorney to prepare a deed of trust to secure assumption that expressly secures the assuming party's obligation to sell the real property or refinance the assumed loan by the deadline. The typical deed of trust to secure assumption used in divorce suits lacks these necessary terms.

When representing the party who is supposed to refinance, *i.e.*, the party assuming the loan, negotiate a credit for your client of the portion of the principal of the loan balance the client pays after the date of divorce if your client fails to satisfy the conditions necessary to be awarded the asset in its entirety.

E. Award the Property Subject to Liabilities to the Other Party

An analysis of the liabilities begun in the initial consultation that culminated in the inventory and appraisement, coupled with the knowledge of the characterization of property and marital property liability, tells the attorney which property is vulnerable to creditors. If liabilities are a serious concern, the client should seek those assets that are either exempt from creditors or not subject to liabilities that the client cannot or will not pay.

This strategy is not without risks. This strategy may result in the client receiving a lower total value of assets as the choice of assets is limited. This strategy may result in the client not receiving the types of assets the client ideally would want. For example, the client may end up with a disproportionate amount of retirement benefits and not any rental property or investment accounts. These sacrifices would be offset by the protection from creditors the awarded assets enjoy.

This strategy creates opportunities for the other spouse. By consciously and expressly taking vulnerable assets—by accepting the risk that liabilities might not be paid and unprotected assets later lost to creditors—the other spouse can emerge with assets that have a greater fair market

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value, fewer tax consequences, and more utility than those the more cautious spouse receives. The choice comes down to which spouse welcomes risk and which has the prospect of future income or assets (such as an inheritance) to overcome that risk.

VI. HAVE A LIABILITY STRATEGY

There is no miracle cure for liabilities other than having the money on hand to pay them. When there is insufficient money or the value of the parties' property is locked up in nonliquid investments, when the threat of liabilities is present, the attorney needs to devise a strategy that includes how to deal with the liabilities.

Often the attorney and client focus on the assets to be divided, giving scant attention to the liabilities threatening those assets and the parties. We can no longer get by with erroneous characterizations of liabilities as "community" or "separate." The truth is more complicated than those false labels. The attorney's task is to discern that complicated truth when analyzing both the assets and liabilities, particularly in the inventory and appraisement.

That analysis must start before the I&A is prepared. Temporary orders provide an opportunity to reduce or eliminate liabilities that could affect the client or the property the client wants after the divorce is finalized. Through means such as temporary spousal support or the court-ordered sale of assets, temporary orders can shape the I&A.

Include as much information as you can about liabilities in the I&A. That information will further guide the client and you. That information may also help persuade the other party or the court to award certain property to the other party, conditionally or not, and award perhaps less risky assets to the client. Importantly, this information will alert the client to the risks the liabilities pose to the client personally and to the assets the client may want.

Prepare the language you want to use to address these assets and liabilities before crucial moments in the suit, such as the temporary hearing, mediation, and the final hearing. Prepare exhibits with this language to submit to the court and to include in the mediated settlement agreement and decree. Don't count on a judge or mediator to devise

this language for you or for opposing counsel to permit its inclusion in a decree if not previously included in a mediated settlement agreement or ordered by the court. Plead and present evidence to justify the inclusion of indemnification language but think creatively about other means to make sure the liabilities get paid in a manner acceptable to your client.

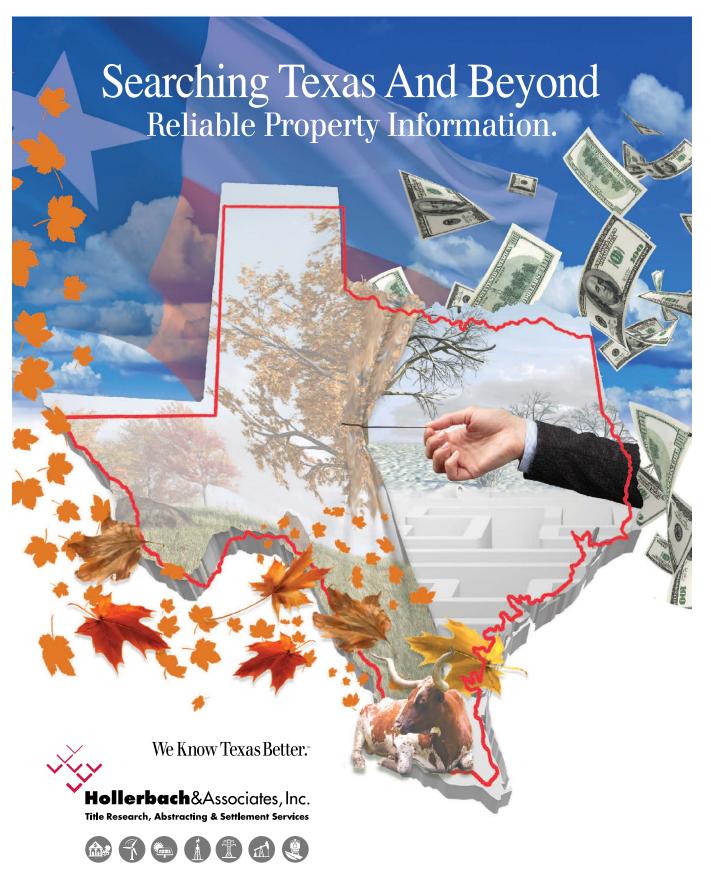
With a sound strategy, good information, and careful analysis of both the assets and the liabilities, the client may keep the assets awarded and be as financially sound as possible after the divorce. In this way, perhaps the client's pockets will not be so empty that you will be paid for all your hard work.

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Appendix A					
Summary of Marital Prope rty Liabilities					
Who/What is Liable for Payment	Spouse 1 Incurred Debt before Marriage, Spouse 2 not Personally Liable	Spouse 1 Incurred Debt during Marriage, Spouse 2 not Personally Liable	Creditor Agrees to Look Only to Spouse 1's Separate Property		
Spouse 1 Personally Liable	X	X	X		
Spouse 1's Separate Property	X	X	X		
Spouse 1's Sole Management Community Property	Х	X			
Joint Management Community Property	Х	Х			
Spouse 2's Sole Management Community Property					
Spouse 2's Separate Property					
Spouse 2 Personally Liable					
Who/What is Liable for Payment	Who/What is Liable for Payment	Tortious Liability of Spouse 1 during Marriage			
Spouse 1 Personally Liable	X	X			
Spouse 1's Separate Property	X	X			
Spouse 1's Sole Management Community Property	Х	X			
Joint Management Community Property	Х	X			
Spouse 2's Sole Management Community Property					
Spouse 2's Separate Property					
Spouse 2 Personally Liable					
Who/What is Liable for Payment	Spouses Both Personally Contracted	Debt for Necessaries of Either Spouse	Debt Incurred by Spouse 1 as Agent of Spouse 2		
Spouse 1 Personally Liable	X	X	X		
Spouse 1's Separate Property	X	X	X		
Spouse 1's Sole Management Community Property	X	X	X		
Joint Management Community Property	X	X	X		
Spouse 2's Sole Management Community Property	Х	X	X		
Spouse 2's Separate Property	Х	Х	Х		
Spouse 2 Personally Liable	X	X	X		



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What are Res Judicata and Collateral Estoppel?

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WHAT ARE RES JUDICATA AND COLLATERAL ESTOPPELP

Res Judicata and Collateral Estoppel are defenses that a party can raise in response to a lawsuit, where the case has been arguably litigated in a previous lawsuit. The general proposition is that because another Court has already made a ruling on the issues in the present case, the Plaintiff is barred from retrying the case elsewhere.

Where the issues in one case have been asserted and litigated, and the same facts and circumstances were subjected to rulings by the sitting Court, a Plaintiff may be 'estopped' or barred from simply filing another suit, against different parties, and trying again. These rules work in tandem with Rule 39 of the Rules of Civil Procedure which require the joinder of parties who's rights will be affected by the outcome of litigation.

The doctrine of res judicata bars claimaints from bringing claims in a present suit that should have been asserted in prior suit.

Williams v. Nat'l Mortg. Co., 903 S.W.2d 398 (Tex. App. 1995), writ denied (Jan. 18, 1996). Collateral estoppel is characterized as issue preclusion because it bars relitigation of any ultimate issue of fact actually litigated and essential to the judgment in a prior suit, regardless of whether the second suit is based upon the same cause of action. Wilhite v. Adams, 640 S.W.2d 875, 876 (Tex.1982); Benson v. Wanda Petroleum Company, 468 S.W.2d 361, 362 (Tex.1971). Bonniwell v. Beech Aircraft Corp., 663 S.W.2d 816, 818 (Tex. 1984).

The scope of res judicata is not limited to matters actually litigated; the judgment in the first suit precludes a second action by the parties and their privies not only on matters actually litigated, but also on causes of action or defenses which arise out of the same subject matter and which might have been litigated in the first suit. Barr v. Resol. Tr. Corp. ex rel. Sunbelt Fed. Sav., 837 S.W.2d 627, 630 (Tex. 1992).

This compels parties to raise all claims and defenses in a lawsuit, and join all necessary parties in order to prevent inconsistent judgments and rulings in separate cases.

The rule of collateral estoppel, or as sometimes phrased, estoppel by judgment, bars relitigation in a subsequent action upon a different cause of action of fact issues actually litigated and essential to a prior judgment. It has been said that the rule rests upon equitable principles and upon the broad principles of justice. Cauble v. Cauble, 2 S.W.2d 967 (Tex.Civ.App. 1927, writ dism'd).

What are Res Judicata and Collateral Estoppel?

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The rule is generally stated as binding a party and those in privity with him. See Kirby Lumber Corp. v. Southern Lumber Co., 145 Tex. 151, 196 S.W.2d 387 (1946); Cauble v. Cauble, supra; Evans v. McKay, 212 S.W. 680 (Tex.Civ. App.1919, writ dism'd); Smith v. Wood, 115 Ga.App. 265, 154 S.E.2d 646 (1967); 46 Am. Jur. 2d, Judgments, S 394 (1969). Section 83 of the Restatement of Judgments (1942) states that a person who is not a party but who is in privity with the parties in an action terminating in a valid judgment is bound by the rules of res judicata. A comment to this section says in part: 'Privity is a word which expresses the idea that as to certain matters and in certain circumstances persons who are not parties to an action but who are connected with it in their interests are affected by the judgment with reference to interests involved in the action, as if they were parties. Benson v. Wanda Petroleum Co., 468 S.W.2d 361, 362-63 (Tex. 1971).

Where Res Judicata is interpreted as "Claim preclusion," collateral estoppel is seen as "issue preclusion" so where a party may not have litigated an underlying fraud claim in a previous action, it may have already litigated the underlying facts and circumstances which give rise to that fraud claim.

What this means is that if a Plaintiff has a lawsuit that concerns, say, the breach of a contract between two parties, and potential liability of a third party, but the Plaintiff never adds that third party and loses the first suit, then the Plaintiff may be barred from simply forging ahead with a second lawsuit against that third party. If they filed it anyway, the third party could file, pursuant to Tex. R. Civ. Pro 94, the affirmative defense of

Res Judicata, claiming that the case has been litigated already and the Court has issued a ruling or judgment, or the defense of collateral estoppel, claiming that the issue of whether the contract was breached was litigated in the prior suit. If sustained, the affirmative defenses would cause the Court to dismiss the case.

William Scazzero is with the firm of Hayes, Berry, White & Vanzant, LLP in Denton, Texas. William has practiced civil litigation in over 20 Counties in Texas. He has tried and successfully defended multi-million dollar civil jury

trials, won hundreds of thousands of dollars in summary judgments in counties all over the state, and negotiated multi-million dollar real estate, business law, probate, and oil and gas settlements. William has served as counsel for oil and gas companies, real estate investors, small and large businesses, landowners and homeowners, and cities and towns across North Texas. He is also a qualified mediator in the State of Texas, and an avid fan of local sports teams, and personal recreation.

NOTICE OF NOMINATIONS/ELECTION OF PRESIDENT-ELECT

Pursuant to Standing Rule XIV of the Paralegal Division of the State Bar of Texas, notice is hereby given of an election for the office of 2023-2024 President-Elect. This election will be held by electronic mail during the month of January 2023 by the Board of Directors.

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

XIV. OFFICERS

B. ELIGIBILITY

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

Any qualified individual who is interested in running for office of President-Elect should forward a one-page resume, together with a letter of intent to run, to the nominations committee chair at the following address or electronic mail address TO BE RECEIVED NO LATER THAN JANUARY 14, 2023 and a confirmation e-mail will be sent by January 17, 2023.

Heather Ulliman

Chair, President-Elect Nomination Committee GoransonBain Ausley, PLLC 8350 N Central Expy, Ste 1700 Dallas, TX 75206-1613 Telephone: (214) 373-7676 District2@txpd.org

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

From Paralegal to Lawyer

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FROM PARALEGAL TO LAWYER

Interview with Mary Evelyn McNamara, Rivers McNamara, Austin, TX.

Mary Evelyn is a former member of the Paralegal Division

Q: Tell us about your career as a Paralegal, and then your decision to go to law school, and the practice you have today; how long you have been an attorney?

I did not plan to become a paralegal. In 1986, I moved to Austin just out of college. I planned to work for a couple of years then go to graduate school to get a Ph.D. in English or History. In the meantime, I needed a job. I had been a relief receptionist at an office for a couple of summers during college, so I looked for a receptionist job. I landed at a firm called Spivey, Grigg, Kelly & Knisely. I had no idea

who these people were, but it turned out I was working at a firm of stellar lawyers. I moved from receptionist to bookkeeper to paralegal. From 1989 to 1999, I had the great fortune to be the paralegal for Dicky Grigg, a highly accomplished plaintiffs' personal injury trial lawyer. The work was challenging and interesting, and Dicky gave me the room to grow as much as I wanted to. He supported me in studying to become a NALA Certified Legal Assistant and in studying to be in the inaugural group of TBLS board-certified paralegals in 1994. He also supported me in my work with the State Bar Paralegal Division (then the Legal Assistants Division) and the Capital Area Paralegal Association in Austin.

Just as I had not planned to become a paralegal, I sure did not envision becoming a lawyer. But the legal arena seeped into my bones. I thought about law school off and on for a few years, then in early 1998 I finally decided to apply. I gave Dicky a year and a half notice, started law school at UT in 1999, and graduated in 2002. It amazes me that I have been an attorney for 20 years now.

For the first two years after law school, I was a law clerk at the Third Court of Appeals in Austin. Then I started as an associate with Brown McCarroll (now Husch Blackwell) in Austin. Two days after I started, the head of the family law group, Richel (Rikky) Rivers told me she needed help. She met with me for more than three hours, giving me a rundown of her cases. I was fascinated and began working in family law that day. Ginger Smith and Jeanette Ybarra, who were both active in the Paralegal Division before they each retired, were Rikky's legal assistants. They welcomed me and taught me so much-because I had a lot to learn. In March 2011, Rikky and I formed our firm, Rivers McNamara. We've been doing that ever since. We were fortunate that Ginger and Jeanette joined us at our new firm. Ginger retired in 2016, and then Jeanette retired in 2021.

As I did when I was a paralegal, I wanted to become board certified in my area. So, in 2009, I became board certified in family law.

Today, my practice mainly involves complex divorce cases and child custody cases. I also handle family law appeals.

From Paralegal to Lawyer

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O: For our members who may be contemplating law school, from your experience – what was it that you expected law school would be from your knowledge as a paralegal, and what was it NOT? What should a paralegal consider before making the decision to go to law school?

Because I knew many law clerks who had gone to UT, I expected law school to be more theoretical than practical in its training. That turned out to be true, especially in the first year. Being a paralegal helped me with the terminology, though. I knew what pleadings, motions, and discovery were. Being a paralegal also helped me with civil procedure, both the first-year federal civil procedure class and a later Texas civil procedure class.

I had no idea how much of a pressure cooker the first year of law school would be. There's constant reading. Generally, you never know when you'll be called on in class, so you have to be prepared every day. And at the end of the semester, your entire grade rests on one final exam. Some people's competitive natures come out in unattractive ways. The second and third years of law school are plenty busy, but there's generally less pressure than in the first year.

If you're considering going to law school, why? Talk to other people who have gone to law school recently, especially if they were paralegals before they went to law school. How were their experiences? I was without my own income for the first time as an adult. It was a leap of faith for me to quit my job of 13 years and go back to school. If a primary goal is to make more money, the economics may not be in your favor for a while after law school. Can you handle full-time law school financially? If not, is part-time law school available? If you are staring down huge student loans that you'll be paying off for years after law school, will the economics work for you?

Q: Was it difficult to transition from paralegal to attorney for you? Why or why not, and how so? How have you changed?

Yes, it was difficult! Starting out as a new lawyer after being an experienced paralegal, put back in the position of being a newbie again. Even though I was still in the legal field, I was starting over. It took some time to get my bearings in the transition.

It was ingrained in me as a paralegal that I could not give any legal advice. Now, as a lawyer, I was the person people looked to for advice. Although my work as a paralegal helped me as a lawyer, a huge challenge was delegating work to a paralegal. I wanted to do it all, and it wasn't the best for our clients or our team for me to do it all. Ginger Smith and Jeanette Ybarra were instrumental in helping me learn to delegate. Still, it took a while to be comfortable in delegating.

Now, after 18 years as a family lawyer, I believe I am much better at delegating. I have to be, because not only do I have my caseload but also, I am the managing partner for my law firm.

Q: You received the 2022
Professionalism Award from the
Texas Center for Legal Ethics/
Austin Bar Association; how do you
define Professionalism? What are
components of Professionalism in
your view?

It was quite the surprise to receive the award, and I am honored beyond measure. Professionalism to me means bringing my best to my work and treating people with respect. Professionalism to me also includes devoting time to improve the legal profession. Ways in which I have done this include handling pro bono

From Paralegal to Lawyer

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cases and mentoring newer lawyers and law students. Also, since my third year of law school, I have been a member of two Austin Inns of the American Inns of Court, first the Robert W. Calvert Inn for several years and more recently the Barbara Jordan Inn. The Inns are dedicated to professionalism, ethics, civility, and excellence in the legal profession. I also serve on the Family Law Council of the State Bar and speak frequently about family law topics.

Q: What are ways we can exercise Professionalism, either as paralegals or, as attorneys?

If you're a member of the Paralegal Division, then professionalism is important to you. One of the challenges paralegals face is that they may know answers to legal questions that clients ask, but they may not answer those legal questions. Be fully trained on the unauthorized practice of law to ensure you remain in compliance.

Keep improving upon your work. Join a local paralegal organization. Join the Paralegal Division. Go to seminars. Consider becoming a board-certified paralegal. But also take time off. We cannot bring our best selves to our work if we are exhausted.

DO NOT GOSSIP ABOUT CLIENTS!

Maintaining client confidentiality
is paramount. I cannot tell you how
many times I've overheard lawyers
talking about cases in an elevator
or in a restaurant. That's unethical,
and it taints the legal profession. As
a family lawyer, I receive information
all of the time that would make for
some juicy gossip. But I must preserve
client confidences—and it's ALL
CONFIDENTIAL.

Treat opposing counsel and their staff with respect. Everyone in my firm should be treated with respect, and if someone treats a member of my staff poorly, that person hears about it from me. And always, always, always treat court personnel with respect.

Now I am not perfect, and there are

people I encounter who challenge me to remain professional. Over the years, I have developed coping mechanisms for dealing with difficult personalities. Look for healthy ways that you can remain professional in challenging circumstances.

Give back. Volunteer at a legal clinic. Mentor newer people in the profession. Consider serving in a leadership position in a legal organization.

Thank you, to Mary Evelyn for sharing your professional journey!

Michele Boerder, TBLS-BCP, CP Paralegal Division Professional Development Committee Chair

Tell your colleagues:

PD Pro-Rated Membership is December 1, 2022 – February 25, 2023. Members joining between December 1 and February 25 (Pro-Rated Time Period) join the Division for half price and will be members through the end of the membership year, which is May 31. Active and Associate members will be required to obtain the mandatory CLE hours for renewal, 6 hours of CLE, 1 of which must be legal ethics. Two of the six hours can be satisfied with self-study or pro-bono, neither of which can replace the legal ethics requirement. So, depending on when you join you will have between 3 and 6 months to complete your CLE requirements for renewal.



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The Ethics of Notarial Duties and Conflicts of Interest

Texas Paralegal Journal Fall 2022



THE ETHICS OF NOTARIAL DUTIES AND CONFLICTS OF INTEREST

Many paralegals are also notaries. Whether working for a law firm, corporation, or agency, it is convenient for attorneys and clients when paralegals as also notaries.

The primary purposes of notaries are to deter document fraud and act as impartial witnesses in the execution of documents. Notaries are public officials. Therefore, it is crucial for notaries to maintain impartiality, including avoiding even the appearance of a conflict of interest.

Texas notaries are prohibited from notarizing documents if the notary is a party to the transaction or instrument. Notaries also may not notarize documents if the notary has a personal, financial, or beneficial interest in the transaction or instrument. Further, notaries are prohibited from notarizing their own signatures.

Generally speaking, it is not a conflict of interest for paralegals to notarize documents for their employers or their employers' clients. Even though a paralegal may benefit indirectly because their employer settled a case, closed a deal, or is receiving funding, those situations are not considered conflicts of interest. However, if there is any possibility that someone may think that the paralegal has a conflict of interest, the paralegal should have another notary handle the notarization.

Although not specifically prohibited by law, even if the notary does not have a personal, financial, or beneficial interest in the transaction, the best rule is to refuse to notarize ANY documents for family members. This will avoid any possible issues or questions regarding the notarization.

In addition to traditional notarizations, notaries also have the authority to administer oaths. The most common situations when a notary will administer oaths are when notarizing a document that requires the signer to swear or affirm to the information in the document, and when a notary must place a witness under oath to swear or affirm to the identity of the signer when the signer's identity cannot be verified by their ID. When the administering an oath, notaries should read the oath or affirmation aloud, and confirm the signer is swearing or affirming the information in the document or the identity of the signer.

Notaries may also take depositions. This is why court reporters are also notaries. Nevertheless, although notaries are authorized to take depositions, that does not mean they should.

An attorney recently contacted me regarding a deposition notice she received. The noticing attorney had advised that there would be no court reporter, only a videographer, and

The Ethics of Notarial Duties and Conflicts of Interest

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that the noticing attorney's paralegal would be swearing in the witness. The attorney was not comfortable with the situation and wondered if it was permitted.

The attorney and I quickly determined that the attorney's paralegal is a notary, which does authorize her to administer oaths and serve as the deposition officer. But despite being authorized to do so, the attorney and I agreed that we did not think the paralegal could be considered impartial since she worked for the noticing attorney who represented one of the parties.

I located one case, Clegg V. Gulf, C. & S. F. RY. Co., 137 S.W. 109 (Tex. 1911) that appears to directly address the impartiality of the deposition officer. The court states that although the statute does not outline the qualification of a deposition officer, the court has clearly established that the deposition officer must be impartial between the parties. Therefore, in the situation described above, the other party would have a valid basis to object to the noticing attorney's paralegal serving as the deposition officer. Fortunately, the parties agreed to hire a court reporter, so the issue was resolved.

Although it is useful and convenient for paralegals to also be notaries, paralegals must still remain impartial and avoid conflicts of interest when performing notarial acts.

Ellen Lockwood, ACP, RP, is the Chair of the Professional Ethics Committee of the Paralegal Division and a past president of the Division. She is a frequent speaker on paralegal ethics and intellectual property and the lead author of the Division's Paralegal Ethics Handbook published by Thomson Reuters. She may be contacted at ethics@txpd.org.



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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SURVEY SAYS — TAPS 2022 — CLE NO. 1 ANSWER

We thought we might be in JEOPARDY but through PERSEVERANCE, our PRESENCE for TAPS was strong. It was a great seminar!!

Thank you to all who worked so hard to make TAPS 2022 such a great event and thank you to all who made it so wonderful by attending and participating — from members to speakers to sustaining members and our great TAPS Committee. What an outstanding event.

Chaired by Susi Boss, Immediate Past President (kept sane by an awesome team):

Rhonda Brashears, CP, TBLS-BCP, PD Coordinator and Meeting Planner

Lisa Pittman, Co-Chair, Secretary and Scholarship

Pam Snavely, ACP, Registration and TAPS Mobil APP

Megan Goor, TBLS-BCP, Speakers

Javan Johnson, ACP, TBLS-BCP, Socials

Jennifer Barnes, CP, Vendors

Alice Lineberry, Door Prizes

Kerri Alexander, Marketing

Public Members:

Frank Hinnant – Innovative Legal Solutions

Kelsey Clark - File & ServeXpress

Zach Sherman - Kim Tindall & Associates

TAPS was held in Fort Worth,
Texas September 28-30, 2022 at
the amazing Sheraton Ft. Worth
Downtown Hotel. The Committee
arrived the day before to make
sure everything was ready to go
for our attendees and sustaining
members to have a relaxing, fun and
learning experience.

As we do each year, two scholarships were awarded to Cassie Neal and Mona Tucker based on their applications and essays on the topic of "What Brought me to the Paralegal Profession and Why I Feel CLE is Important." Congratulations to both recipients.

The 2021 Evaluation Winner was Alicia Richeson, and she received a discount for TAPS 2022. So, it pays off to get those evaluations in and let us know how we did overall and be entered into the drawing for the discounted registration.

Vendors and Sustaining Members – what a come-back from our "COVID" year. We had 31 vendors and 30 booths and I mean some GREAT swag. The support of these businesses is always amazing so don't forget to use them when you get back home. The vendors were very pleased with the interaction of our members, and our speakers who saw our exhibit hall were very impressed as well.

Registration was up and running bright and early on Wednesday, and thus began our CLE adventure. Registration topped off at 174 including with 8 who signed up on the first day of TAPS. How about those t-shirts? (you can never have enough TAPS t-shirts.) I do believe some of us can make a quilt from attending (now that's a thought). Rhonda, as our miracle worker, makes registration run like a well-oiled machine each year. Yes, she makes sure you get those ribbons we all compete for!

Speakers - what can you say about all of these attorneys and judges who said yes when asked to speak to our members. We had 65 plus speakers for 5 different tracks! The Speaker Committee and those who volunteered to introduce each one of our speakers for all three days did a great job. Thank you, Megan, for your hard work as well as that of your Committee. Trust me until you have taken on this Committee you have it easy!

TAPS Socials started out with a bang on Wednesday evening with light snacks to get you ready for going out to dinner with friends you haven't seen since 2021. Lots and lots of door prizes were given out thanks to our amazing sustaining members, vendors, and local paralegal organizations. What a great support group.

Thursday was our entertainment social with dinner, libations and some great competitive games of Family Feud. Let's not forget the costumes

Survey Says - TAPS 2022 - CLE No. 1 Answer

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as well. Our costume competition always brings in some great ideas and hard work for the theme. Our Thursday night sponsors were in attendance, and the competition for the Feud game was high! We absolutely cannot have this event without them and send out a huge thanks!!

To continue, on Friday, our Special Session Friday morning was a Jeopardy Ethics Q&A. This woke us all up for early thinking, with questions covering ethics and professionalism. Thank you Javan for some great thinking and on our toes action for the morning!

As we wound our way up to our Annual Meeting and luncheon what a change of atmosphere. To start our meeting the Code of Ethics and Professional Responsibility was presented by Joncilee Davis, President Elect. The Rules of Order were given by Kim Goldberg, Parliamentarian, and the approval of the 2021 Annual Meeting Minutes and Treasurers' Report were presented by Lisa Pittman and Rhonda Brashears, respectively. The State of the Division was given by Susi Boss, Immediate Past President and Lisa Pittman, President. This team highlighted all the work and effort and accomplishments of the 2021-2022 Board of Directors for the Division.

The room was full, and our guest speaker Judge Ada Brown, U.S. District Court – Northern District of Texas, Dallas Division did not disappoint. What a great speaker full of encouragement and positive

engagement. She had us all laughing from the start as she spoke of her rise from paralegal to attorney to judge. WOW is really the only word to express Judge Brown's presentation "Own Your Choices: Bold Choice Bold Rewards. Perspectives from the Bench. "She was phenomenal. She told us she hoped to make us laugh and cry – and she did just that – in all the right ways!

As we always do, in lieu of giving gifts to our speakers and volunteers, a check for was presented to an awesome and inspirational organization the "LOVE & LIGHT MINISTRY." To listen to the story of how and why this organization was started was beyond inspiring. There were also donations of items they were asking for to hand out as needed including, sleeping bags, tents, and warm clothing.

Thank you as always to those law firms and paralegal organizations from across the state who were table sponsors.

Let us not forget that Friday's luncheon also serves as our Annual Meeting when the new 2022-2023 Board of Directors and officers for the Paralegal Division who have been hard at work since June 2022 are officially introduced. The outgoing 2021-2022 Board and Officers were recognized as were:

Exceptional Pro Bono Award – Susy Johnson, TBLS-BCP

Outstanding Committee Chairs – Amy Rainwater, TBLS-BCP, PHP, Chair of the On-Line CLE Committee and Elaine Simons, Chair of the Student Liaison Ad-Hoc Committee.

Special Recognition was given for work with Paralegal Division over the past years to Susan Wilen, RN.

But let us not forget the closing... GRAND PRIZE WINNERS of \$500.00 each from: The Austin Bar Association, The Tarrant County Bar Association and Texas Lawyers Insurance Exchange. Thank you so much for your support.

Your 2023 TAPS Committee is already preparing and putting on their thinking caps for Frisco, Texas, so to keep up with them you need to open and read your TPJ and Paralegal Pulse so you don't miss out on any news.

Also, there will be announcements for videotaped CLE from TAPS 2022, just another reason to go to our website for forthcoming information on some great speakers you may have missed by not being at TAPS.

What can we say about our awesome AV crew. Jeff Dyke and Doug Smith of TechKnowledgeEase who were able to create miracles when there were glitches, kept us on our toes and always made things run smoothly (while paddling under water as fast as they could!).

Another great TAPS in the books and another great TAPS (2023) coming soon, save the date September 27-29, 2023 in Frisco. Stay tuned and thank you all for the support and hard work put into each year of making TAPS bigger and better.

Susi Boss, TAPS 2022 Chair

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Paralegal Division 2022-2023 Board of Directors



Susi Boss, TAPS Chair and Immediate Past President Rhonda Brashears, TBLS-BCP, CP, Paralegal Division Coordinator Lisa Pittman, President



Megan Goor-Peters, TBLS-BCP Judge Ada Brown, US District Court Northern District of Texas, Dallas Division

Survey Says - TAPS 2022 - CLE No. 1 Answer

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Susy Johnson, TBLS-BCP, Recipient of the Exceptional Pro Bono Award



Judge Ada Brown



Lisa Pittman honoring Susi Boss with her Outdoing Board Plaque



Amy Rainwater, TBLS-BCP, PHP, Outstanding Committee Chair for Online CLE



Elaine Simmons, CP, Outstanding Committee Chair for Student Liaison Ad-Hoc Committee



Cecilia Moreno, Jenna Earhart, Kimberly Hennessy – Winners of the Grand Prize

Texas Paralegal Journal

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Attendees











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Socials











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Vendor Hall



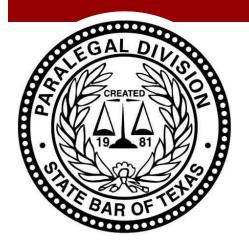






Board of Directors

Texas Paralegal Journal Fall 2022



Board of Directors QUARTERLY BOARD MEETING SUMMARY Fall 2022

Submitted by President-Elect, Joncilee Miller, ACP

The PD Board of Directors met on Friday, September 30 and Saturday October 1, 2022 in Fort Worth, Texas.

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 - Vacant

District 12 - Pamela Snavely, ACP

District 14 - Maria Sturdy

District 15 - Arturo Ortiz

District 16 - Clara Buckland, CP

Paralegal Division Coordinator -

Rhonda Brashears, CP, TBLS-BCP

The Board of Directors discussed their Districts and the up upcoming events in their Districts, including plans for Texas Paralegal Day Celebrations.

They also discussed the preparations for the next membership renewal time period, including the success of the new postcard reminder that was sent for the 2022 renewal time period.

They discussed ways to continue to increase membership and member benefits. They further discussed the importance of consistent reminders about members keeping their CLE certificates in case of possible spot-audit.

The Board continues to take part in mini-training sessions on multiple topics to better assist them in serving their members.

A recap of TAPS 2022 was provided and it was felt that TAPS 2022 was a great success with great attendance and vendor involvement.

Some upcoming dates to remember:

Membership: Pro-rated members time period is December 1, 2022 through February 25, 2023 – join the Paralegal Division for half price!

TAPS 2023 is in Frisco -

September 26-28, 2023 - Save the Date!

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.



SAVE THE DATE



NFPA 2023 Annual Convention and Policy Meeting

October 5 - 8, 2023

hosted by National Capital Area Paralegal Association

www.paralegals.org

Texas Paralegal Journal Fall 2022

PARALEGAL DAY CELEBRATIONS

District 2 - Dallas

On October 21, 2022, District 2 joined with Dallas Area Paralegal Association, J.L. Turner Legal Association and North Texas Paralegal Association for a luncheon to celebrate Texas Paralegal Day. The President of the Dallas Bar Association, Krisi Kastl, was the keynote speaker. The theme for the event was "Back! And on to the Future!" Dallas Mayor Eric Johnson issued a Proclamation declaring October 23, 2022 Paralegal Day in Dallas. This was presented and read during the luncheon.







OFFICE OF THE MAYOR / CITY OF DALLAS



WHEREAS, I am pleased to honor paralegals across the City of Dallas who have continuously served with the utmost integrity and dedication; and

WHEREAS, Whether it be within the government or in a private firm or corporation, paralegals offer essential legal and technical support to attorneys; and

WHEREAS, The impact paralegals have had in legal services across our city and state has not gone unnoticed; On October 23, 1981, thirty-one years ago today, The Paralegal Division of the State Bar of Texas was created to promote high standards of conduct, professional ethics and responsibility through continuing legal education; and

WHEREAS, Observing our judicial system, paralegals make a positive impact and contribution to client service every day; and

WHEREAS, I commend paralegals across the City of Dallas who have served our community with their invaluable knowledge and unwavering fidelity to justice by assisting attorneys in providing legal services.

NOW, THEREFORE, I, ERIC JOHNSON, MAYOR OF THE CITY OF DALLAS, do hereby proclaim October 23, 2022 as

PARALEGAL DAY

in Dallas, Texas.





The Senate of The State of Texas

SENATE PROCLAMATION NO. 1144

WHEREAS, The Senate of the State of Texas is pleased to honor paralegals in Austin and across the state and recognize October 23 as Texas Paralegal Day; and

WHEREAS, Paralegals are vital resources in law firms, governmental entities, and private corporations and businesses; they perform valuable services for and under the direction of an attorney, and their work requires a thorough knowledge of legal concepts and facts; and

WHEREAS, October 23 marks the anniversary of the founding of the Paralegal Division of the State Bar of Texas; the division was established to promote high standards of conduct, professional ethics, and responsibility through continuing legal education and cooperation with the State Bar of Texas; and

WHEREAS, The goals of the Paralegal Division are to achieve more economical and improved legal services throughout the state, to focus on benefits for its members and the paralegal profession, and to develop opportunities, incentives, and recognition for legal education; and

WHEREAS, Through their exceptional talents and expertise, paralegals provide valuable services that contribute significantly to the efficient functioning of the judicial system in the Lone Star State, and they are indeed worthy of special recognition; now, therefore, be it

PROCLAIMED, That the Senate of the State of Texas hereby commend the paralegals of this state for their important services and recognize October 23 as Texas Paralegal Day; and, be it further

PROCLAIMED, That a copy of this Proclamation be prepared as an expression of high regard from the Texas Senate.

Watson

Member, Texas Senate

I hereby certify that the above Proclamation was adopted.

Secretary of the Senate

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District 4 - Austin

District 4 and CAPA, jointly hosted a Paralegal Day Social at the Dogwood Rock Rose in Austin. It was an outdoor venue, and the weather was beautiful. The event was well attended, and everyone had a good time. Vendors attended and generously provided door prizes for attendees.







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District 5 - San Antonio

19TH ANNUAL SAN ANTONIO PARALEGAL DAY CELEBRATION:

We appreciate all PD District 5 and SAPA members who attended the jointly held Paralegal Day celebration held on October 21, 2022, at the Norris Conference Center. It was a joyous event! 19th year and going strong! We also had students from the Marshall High School Law Program, and staff members from the UTSA Paralegal Certification Program in attendance. A huge thank you to our vendors for their donations and support. A special thanks to our keynote speaker, Rebecca Lorenz, for an insightful presentation on Forensic Accounting. Congratulations to JoAnn Trevino on receiving the 2022 Paralegal of the Year award. Well-deserved and we're so excited for JoAnn! It was our honor to make a donation to the EAGLES Court. The vision of the EAGLES Court is to invest in teen boys placed in foster care, helping them value their whole selves and their inherent strengths. Kudos to the Paralegal Day Planning Committee for a job well done! See y'all next year.











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District 7 - Amarillo

District 7 was honored with a Proclamation designating October 23, 2022 as Paralegal Day in Amarillo, Texas. CITY OF
AMARILLO, TEXAS
City Council

WHEREAS, in 1981 the State Bar of Texas first established the Legal Assistants Division, now referred to as the Paralegal Division, to enhance legal assistants' participation in the administration of justice, professional responsibility, and public service in cooperation with the State Bar; and

WHEREAS, a paralegal is someone, who is qualified through various combinations of education, training and work experience and is employed by a layer, law office, governmental agency and serves in a function which involves the performance of; and

WHEREAS, paralegal is one the highest-demand jobs in the United States. According to the Bureau of Labor Statistics, the profession is expected to grow 12% over the next decade; and

WHEREAS, the recognition of this day serves as a reminder that without the assistance from a paralegal, the arguments of many attorneys would not be possible; and

Now, THEREFORE, WE MAYOR AND CITY COUNCILMEMBERS, of the City of Amarillo, do hereby proclaim October 23, 2022 as

"Paralegal Day"

In Amarillo, Texas.

GIVEN UNDER OUR HANDS AND SEAL OF OFFICE this 24th day of October 2022.



mgwhulaon Ginger Nelson, May

Cole Stanley Councilmember

Freda Fourell.

Freda Powell, Councilmemb

Eddy Sauer, Councilmember

Howard Smith, Councilmember

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District 12 - Denton

District 12 and the Denton County
Paralegal Association joined together
to celebrate Texas Paralegal Day
on October 20, 2022. The evening
event was held at Fortunata Winery
in Aubrey, Texas. Members from both
associations enjoyed a wine tasting
and wonderful Italian buffet dinner.
There were many door prizes which
were donated by vendors as well as
local law firms.











Photo of Denton County
Commissioners –
Proclamation (from left
to right: Commissioner
Pct. 1 – Honorable Ryan
Williams, Jessica Fleming,
Brenda Raz, Commissioner
Pct. 2 – Honorable Ron
Marchant, Brenda Raz, Amber
Bishop, Denton County Judge
– Honorable Andy Eads, PD
President – Lisa Pittman,

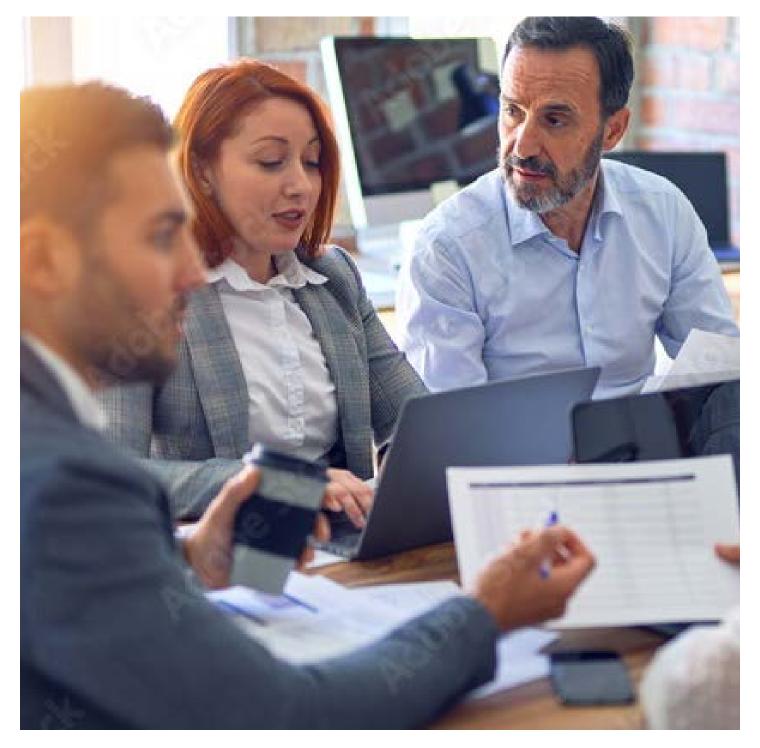
Martha Gallegos, PD District 12 Director – Pamela Snavely, Jennifer Earhart, Amy Dugger, Nancy West, Commissioner Pct. 3 – Honorable Bobbie Mitchell and Commissioner Pct. 4 – Honorable Dianne Edmondson).

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District 14 - Longview-Tyler

On October 18, District 14 hosted a social event in Tyler at Rick's on the Square. Each attendee was presented with a gift and there was a door prize. District 14 members and TAALP members attended this event. Everyone enjoyed being able to visit and learn more about the State Bar Paralegal Division.

On October 19th, District 14 partnered with the Northeast Texas Association of Paralegals (NTAP) to celebrate Paralegal Day. At this luncheon, 1 hour of CLE was offered to all that attended. Shawn Latchford with Bruster, PLLC spoke on "Practical Technology" and his presentation was also available on Zoom. Gifts were given to each person who attended in person and there were numerous door prizes.



Paralegal Division Notice Of 2023—District Director Election

Texas Paralegal Journal Fall 2022



PARALEGAL DIVISION

Notice of 2023— District Director Election

The Paralegal Division's DIRECTOR ELECTION for District Directors in odd-numbered districts (Districts 1, 3, 5, 7, 11, and 15) will take place March 23 through April 10, 2023.

- Beginning on January 26, 2023
 each Elections Subcommittee
 Chair will prepare and forward,
 upon request, the following
 materials to potential candidates
 for director in their respective
 district at any time during the
 nominating period:
 - A copy of the List of Registered Voters in candidates' respective district;
 - b. A sample nominating petition; and
 - c. A copy of Rule VI of the Standing Rules entitled "Guidelines for Campaigns for Candidates as Director."

- Each potential candidate must satisfy the following requirements:
 - a. Eligibility Requirements.
 The candidate must satisfy
 the eligibility requirements
 of Article III, Section 3 and
 Article IX, Section 1 A and
 Section 4 of the Bylaws and
 Rule V B, Section 5c of the
 Standing Rules.
 - Declaration of Intent. The candidate must make a declaration of intent to run as a candidate for the office of director through an original nominating petition declaring such intent that

- is filed with the Elections Subcommittee Chair in the candidate's district pursuant to Rule V B, Section 5 of the Standing Rules.
- c. Nominating Petition. The original nominating petition must be signed by the appropriate number of registered voters and must be submitted to the Elections Subcommittee Chair in such district, on or before February 17, 2023.

Paralegal Division Notice Of 2023—District Director Election

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If you are interested in running for District Director, or need further information regarding the election process, contact the Elections Committee Sub-Chair in your District, or the Elections Chair, Melanie Langford, ACP at Elections@txpd.org.

2022-2023 District Election Committee Sub-Chairs:

District 1 - Michelle Rowland, ACP, CP, TBLS-BCP - michelle.h.rowland@exxonmobil.com

District 3 - Susan Davis, TBLS-BCP - sedgpd@gmail.com

District 5 - Melanie Langford - Elections@txpd.org

District 7 - Marnee Bolen - mbolen@lubbocklawfirm.com

District 11 - Karmen Johnson - karmenj@andersonclements.com

District 15 - Melanie Langford - Elections@txpd.org

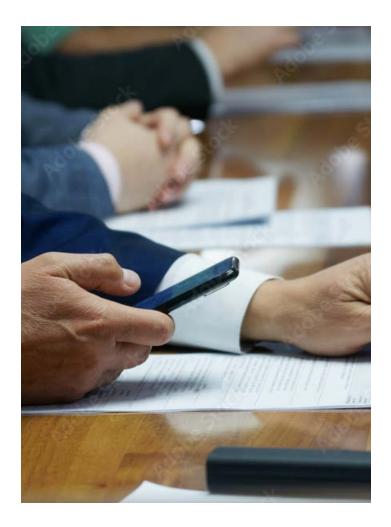
NOTICE OF VOTING-March 23 through April 10, 2023

All Active members of the Paralegal Division in good standing as of March 22, 2023 are eligible to vote. All voting must be completed on or before 11:59 p.m., April 10, 2023.

All voting will be on-line and no ballots will be mailed to members.

Please take a few minutes to logon to the PD's website (beginning March 23) and cast your vote for your district's director. The process is fast, easy, anonymous, and secure.

- Between March 23rd and April 10, 2023 go to www.txpd.org
- In the My Account section, click on "Votes"
- Follow the instructions to login and vote





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: mentorprogrametxpd.org

Texas Jaralegal Journal