

# THE WRIT



A publication of the El Paso Paralegal Association

an Affiliate of The National Association of Legal Assistants ♦ Paralegals, Inc.

November 2022



## President's Message

Dear Members,

I hope everyone had a fun and safe Halloween. This year sure has flown by. This month we will have our benefit for **The Opportunity Center - Transitional Homeless Veterans**. We will have four bands playing a variety of live music. We will be having some belly dancers and lights and sound courtesy of B-17 Oyster Pub. There will be raffles and plenty of food and spirits. If you have not purchased your donations on the wish list, please find it in your heart to do so. This is the charity you all chose, now let's gather and make it an eventful benefit for these veterans. If you have not already done so, save the date, go out there and support this EPPA event and have a great time with some friends.



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## President's Message *(continued)*

This will be EPPA's only fundraising event with a portion of the proceeds going to our association to continue doing what we do.

I want to thank everyone that attended EPPA's Paralegal Day Virtual Seminar- Civil Litigation Update. We had an amazing turn out and we heard great feedback from a lot of our members. Our seminars are only as successful as our members make them.

I want to wish all of you a blessed Thanksgiving. Hope to see you all later this month.

-Yvette Duran  
President



## Announcements

### Welcome New Members

Sofia Hardin

Blanco Ordonez Mata & Wechsler, P.C.

Stephany Mariles

El Paso Community College

***PLEASE JOIN US***

**NOVEMBER 12, 2022**

**B-17 OYSTER PUB**

**201 S. EL PASO ST.**

**5:00 P.M. - 1:00 P.M.**

***EPPA'S CHARITY BENEFIT***

***FOR***

**THE OPPORTUNITY CENTER -  
TRANSITIONAL HOMELESS  
VETERANS**

## Notice of November Meeting

When:	12:00 p.m., <b>November 17, 2022</b>
How:	Zoom videoconference ( <i>forwarded separately by email</i> )
Guest Speaker:	Constance Wannamaker
Topic:	Immigration

Please join us on Thursday, November 17, 2022, for our November regular meeting and presentation by Constance Wannamaker, to be held by Zoom videoconference at 12:00 p.m. A link to the Zoom videoconference will be forwarded separately to all members prior to the meeting.

Because EPPA needs to keep track of CLE participants for verification of hours submitted for CLE credit by those with CP and ACP credentials, we ask that members email Treasurer Laura T. Juarez, CP ([ltjuarez1007@gmail.com](mailto:ltjuarez1007@gmail.com)) after the presentation to request CLE verification when it is available (*the Board's email addresses can be found in the Our Board section later in this edition*).

## November Guest Speaker



### CONSTANCE WANNAMAKER

Attorney and founder **Constance Wannamaker** has two true passions in her life: Defending the legal rights of immigrants and ultra-running.

Much like ultra-running, her love for immigration law requires focus, tireless dedication, and endurance.

Hearing the call to defend the rights of this often under-represented demographic, she entered the legal studies program at Oxford University in Oxford, England. Upon graduating with her J.D. from the University of Maryland School of Law in 1999, she began her career fighting for the rights of immigrants in Texas and throughout the United States.



# PLEASE JOIN US

**Saturday, November 12th, to Support our Charity!!!**



*B-17 Oyster Pub-Downtown El Paso*

**November 12, 2022**

**5:00 pm to 1:00 am**

**201 S. El Paso, Texas**

**El Paso Paralegal Association presents:  
Opportunity Center for the Homeless Veterans  
benefit, the day after Veterans Day!  
11/12/2022 at B-17.**

There are many US military veterans at the Opportunity Center, some with physical disabilities and struggling with the dual diagnosis of mental illness and/or a substance abuse.

**Please come show your support. Live Music- Food- Drinks- Raffles for Prizes**

**Featuring live music by:**

**Anhell**

**FAB4CEZZ**

**AFTERMATH**

**THE BIRDOGS**



**WISH LIST: SWEATS, SLIPPERS, UNDERWEAR, SOCKS, CLEANING SUPPLIES, SOAP, FRESH LINENS, BLANKETS, JACKETS, ETC.**



## November Birthdays



**Pam Soto**

**11/7**

**Margie Lagos**

**11/10**

**Jessica Lucero**

**11/17**



# Highlights from Paralegal Day Seminar

## CIVIL LITIGATION UPDATE

### Service by of Electronic Communication: SB 891

- Legislative mandate: SB 891 (2019)
- TCPRC § 17.033:
  - (a) If **substituted service** of citation is authorized under the Texas Rules of Civil Procedure, the court, in accordance with the rules adopted by the supreme court under Subsection (b), may prescribe **as a method of service an electronic communication** sent to the defendant through a social media presence.
  - (b) The supreme court shall adopt rules to provide for the substituted service of citation by an electronic communication sent to a defendant through a social media presence.

### Due Process in the Electronic Realm

- Evidence that the social media profile is real, not fake
  - ❖ Age of profile
  - ❖ Quantity and history of posts
  - ❖ Instances of direct communication through social media account
- Evidence that intended recipient actually received the documents
- **Bottom Line:** Due process concerns will remain paramount.

### Rule 106: Method of Service

“(b) Upon **motion** supported by a **statement**—sworn to before a notary or made under penalty of perjury—listing any location where the defendant can probably be found and stating specifically the facts showing that service has been attempted under (a)(1) or (a)(2) [of TRCP 106] at the location named in the statement but has not been successful, the court may authorize service.”

....

“(2) in any other manner, including **electronically by social media, email, or other technology**, that the **statement or other evidence** shows will be **reasonably effective** to give the defendant notice of the suit.”

### Rule 108a: Service on International Defendants

- Service by “other means” in TRCP 108a(6) now encompasses the electronic means that are expressly allowed under TRCP 106(b)(2)
- BUT amended TRCP 108a(a)(6) makes clear that service by “other means” must not violate “international agreement or the foreign country’s law”
- **Bottom Line:** State standards do not override international standards.



Gabe Perez: - Discovery Changes and Rules

### Expedited Actions: HB 274 (2011), SB 2342 (2019)

- TGC § 22.004(h): *original source for expedited actions (amended)*  
...The supreme court may not adopt rules under this subsection that conflict with **other statutory law** a provision of: (1) Chapter 74, Civil Practice and Remedies Code; (2) the Family Code; (3) the Property Code; or (4) the Tax Code.
- TGC § 22.004(h-1): *source for more expansive expedited actions (added)*  
...The supreme court shall adopt **rules to promote the prompt, efficient, and cost-effective resolution** of civil actions filed in **county courts at law** in which the **amount in controversy does not exceed \$250,000**. The rules shall balance the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions. The supreme court may not adopt rules under this subsection that conflict with other statutory law.

### Discovery Rules

- Rules Amended → TRCP 190 and TRCP 192–198
- Effective Date → January 1, 2021

### Amended Discovery Control Plans - Levels 1 & 2

- **Level 1** now allows 20 hours total for oral depositions and now applies to higher-dollar cases. TRCP 190.2.
  - Expedited actions with new **\$250,000** limit
  - Divorces not involving children with marital estate valued at **\$250,000 or less** (unless the parties agree to Level 2 or the court orders Level 3)
- **Level 1 and Level 2** reflect initial disclosures. TRCP 190.2, 190.3.
  - Discovery periods now begin when the first initial disclosures are due, as opposed to when the suit is filed
  - Requests for disclosure are removed (here and throughout the rules)

### Amended Discovery Rules – Expert Disclosures

- **Timing (TRCP 195.2)**
  - General Rule
    - ❖ **For Parties Seeking Affirmative Relief:** 90 days before end of discovery period
    - ❖ **For Other Parties:** 60 days before end of discovery period
  - Case-Specific Order: the deadlines in the order apply
- **Content (TRCP 194.3, 195.5)**
  - Carry Over Content: content from former TRCP 194.2(f), 195.5
  - New Content:
    - ❖ TRCP 195.5(a)(4)(C)–(E) – modelled after FRCP 26(a)(2)(B)
    - ❖ TRCP 195.5(c)–(d) – modelled after FRCP 26(b)(4)(B)–(C)

## Highlights from Paralegal Day Seminar



### INTAKE

- **Educate your client**
  - Explain timeline of events: liability determination, treatment, gathering, negotiations and disbursement.
- **Gather ALL forms of insurance early**
  - Third-Party Auto, First-Party Auto, Health, WC, Gov't Liens
  - Explain the various coverages, limits, and subrogation interests.
- **Understand the injury**
  - Determine if liability clear from PR
  - Explain LOPs and how it works

### LITIGATION

- **DISCOVERY**
  - Initial discovery should go out with POP
    - Pressures insurance carrier to make a decision on moving forward with litigation or trying to resolve.
  - Understand rules including 18.0001 requirements for service of medical billing and treatment records.
    - Generally due 90 days from date of Defendant's Original Answer.

### TCPRC 72.051 (House Bill 19)

- Defendants may consider stipulating to course and scope of employment
  - Limits evidence to driver liability for phase one of trial
    - Once liability established, would then proceed to second phase where evidence of direct negligence (negligent hiring, supervision, training) would be allowed for consideration.
  - If Defendant DOES NOT stipulate to course and scope, evidence of direct negligence permitted in phase one.
    - Evidence of direct negligence would be permitted in phase one of trial, especially in relation to negligent entrustment which goes directly toward the course and scope of employment.

## Texas Civil Practice & Remedies Code 72 and Preparing for Trial

MILAD KAISSAR FARAH, J.D.  
THE FARAH LAW GROUP, PLLC  
1231 E. MISSOURI AVENUE  
EL PASO, TEXAS 79902  
LICENSED IN NEW MEXICO AND TEXAS  
[MKF@GFLAWOFFICES.COM](mailto:MKF@GFLAWOFFICES.COM)

### TCPRC 72.051 (House Bill 19)

- For cases filed on or after September 1, 2021
- Bifurcated two-part trial in trucking cases
  - Phase one: jury determines compensatory damages to make P whole, i.e., medical bills, pain and suffering, lost wages.
  - Phase two: jury determines exemplary damages (punitive damages) in the event D conduct was egregious.
- Bifurcated trial provided on Motion by Defendant before:
  - 120 days after Defendant's Original Answer, or
  - 30 days after P amends to ADD a cause of action against D.

### INTAKE: Letter of Protection (LOP)

- Letter of Protection (LOP) is an agreement entered into between an injured individual and a medical care provider willing to contract for deferred payments of the care he or she provides.
  - Great when client has limited access to medical providers
  - Expensive; charged bill\$ incurred and unpaid until resolution.
    - CPRC 41.0105: Payment is merely deferred.
  - Invites scrutiny
  - Understand limits issues
  - Make sure you know your provider

### LITIGATION: MEDIATION

- Understand the issues and which mediator can help
  - Not all mediators are the same
    - Spanish/foreign language speaker
    - Is it the insurance carrier or the plaintiff?
- UPDATE DEMAND LETTER
  - Include relevant discovery information, pictures, documents, and deposition testimony.
  - Should have full Paid v. Incurred information, including secured HI and Gov't liens.
  - Meet with client in advance of sending demand to explain process, demand amount, jury charge and negotiations; try and obtain authority in advance of mediation.
  - Send to opposing counsel and cc insurance carrier well in advance so they can obtain authority, but at least 10 days prior to mediation.
    - Lawyers rep the defendant not the insurance company.
    - Serves as position statement for mediator.



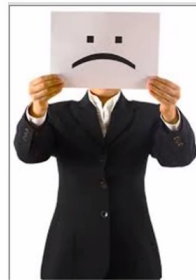
## Highlights from Paralegal Day Seminar



CONNIE J. FLORES  
FLORES, TAWNEY & ACOSTA, P.C.

### NEW TEXAS LAW ON SEXUAL HARASSMENT IN THE WORKPLACE

#### HOSTILE WORK ENVIRONMENT



SEXUAL HARASSMENT MAY OCCUR WITHOUT THE EXISTENCE OF ECONOMIC INJURY OR TERMINATION AS LONG AS UNWELCOME CONDUCT CAUSES A CHANGE TO CONDITIONS OF EMPLOYMENT.

- Verbal, physical or visual forms of harassment, that are sexual in nature, "sufficiently severe, persistent, or pervasive" and unwelcome fall under the category of Hostile Environment Sexual Harassment.
- A single, severe incident, such as a sexual assault, could create a hostile environment. More commonly, a "hostile environment" is created by a series of incidents.

#### PROPER WAY TO REPORT SEXUAL HARASSMENT IN THE WORK PLACE

1. Let the harasser know that his/her conduct is unwanted and unwelcome.
2. Go to a supervisor and explain the circumstances. Be sure to take with you documented dates, times, and specific occurrences if you have them. Also, report the incident to Human Resources. If the appropriate supervisor is unavailable, or is the offender, report the incident directly to Human Resources.

YOU NEED NOT BE THE PERSON HARASSED TO BE AFFECTED BY THE OFFENSIVE CONDUCT.

#### DOES THE HARRASOR HAVE TO BE AN EMPLOYEE?

The harasser may be a supervisor, agent of the employer, a co-worker or nonemployee (for example, a customer of the employer).

#### Employer Defenses to Harassment Claims:

When no adverse employment action is taken against an employee who is otherwise subjected to sexual harassment in the workplace, an employer can establish an affirmative defense to the claim if:

- (1) The employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior, and
- (2) The employee unreasonably failed to take advantage of the employer's preventive or corrective opportunities.

#### "PROMPT REMEDIAL ACTION"



1. An employer have a policy setting forth the employee's rights, and a complaint procedure by which employees may complain about inappropriate conduct and obtain assistance from the company.
2. The employer further promises to investigate all such claims and to take "prompt remedial action" to correct any harassment identified.



## Highlights from Paralegal Day Seminar

### WORKING UP A LITIGATION FILE

#### Planning Considerations

- Overview
- Guides to help develop a case
- Planning and shortcuts
- Making yourself an invaluable resource
- Billing strategy



By Daniel Hernandez,  
Attorney at Law

#### Living Documents

- Limine list
- Witness list and folders
- Hot documents folder
- Plaintiff's trial strategy list derived from discovery and depositions
- Defendant's trial strategy list
- Evidence elements charts
- Jury charge

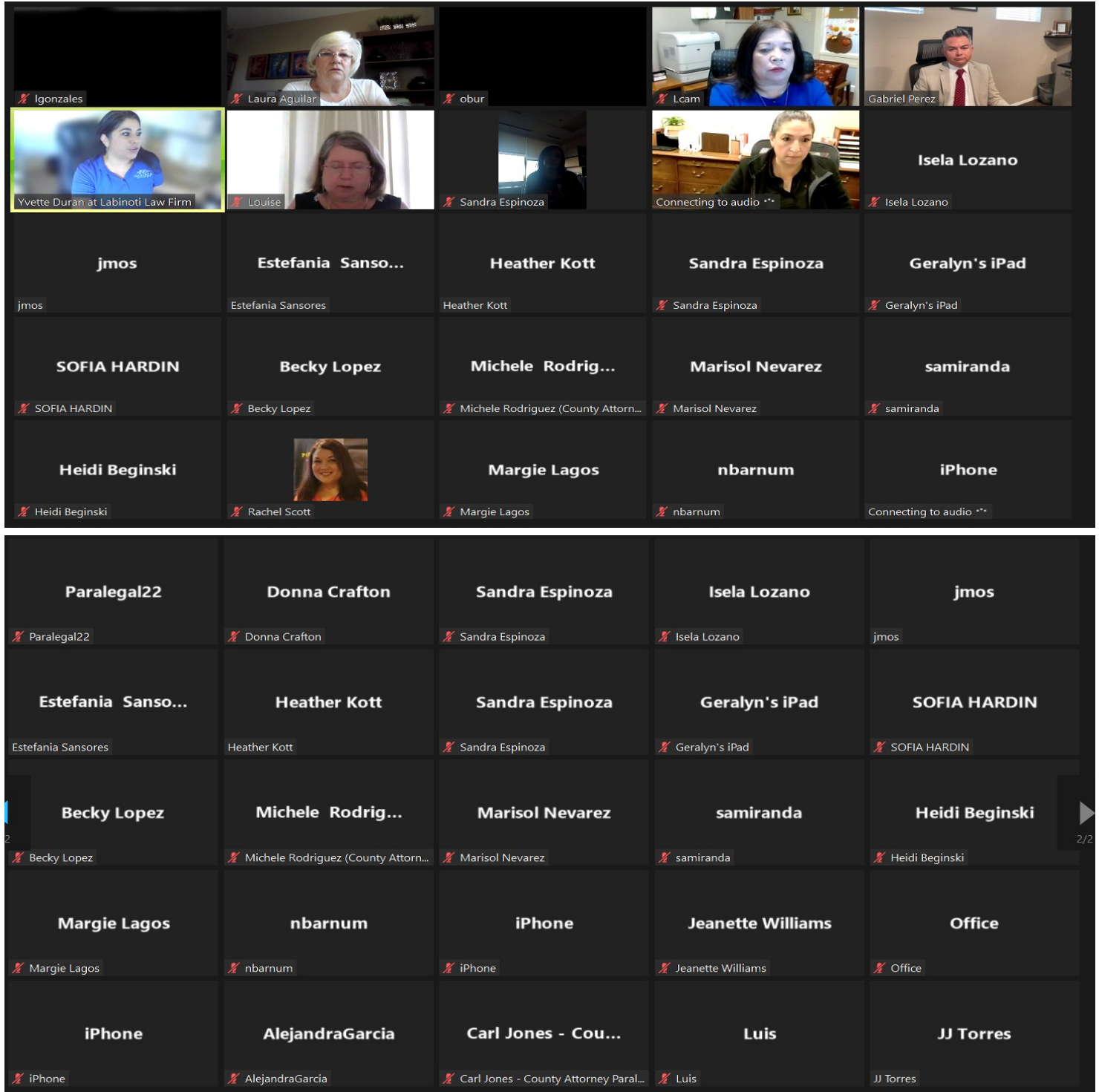
#### Managing Documents

- Identify hot documents
- Use of templates and staff
- Medical records with hidden treasures
- Develop Limine items throughout process including depositions
- iPad-smart pad apps
- Evidentiary considerations, Tex.R. Evid. 801(e), 803(5),(6),(7),(8),(24), 901(b)(7), 902(4)(10)

#### Billing Strategies

- Become familiar with guidelines and client's requirements
- Domino billing activities
  - Evaluate and analyze specific file materials
  - Engage in or attend activity
  - Subdivide work activities if amount requires is too large
  - Prepare summaries or draft documents in sub parts if amount is large
  - Prepare recommend POA or task lists
  - Follow up on POA or tasks

# Highlights from Paralegal Day Seminar



## Upcoming Elections

### VOLUNTEERS NEEDED!

EPPA's members will vote on a new slate of officers at the Annual Meeting of January. All officer positions are open, except for NALA Liaison (two-year term expiring 2024).

For the third time in a row, our President will be serving a second term.

Please consider volunteering to serve on the 2023 Board of Directors. EPPA cannot survive, let alone thrive, without help from its members.



## NALA News



### Securing Lenders and Investors in Real Estate Financings

CLE: 1 • SUBSTANTIVE • BASIC

Commercial real estate projects often require large expenditures of funds through loans and investments from third parties. We will discover how lenders and investors protect their interests in real estate financing and discuss the documentation used by the parties to secure and provide notice of those interests.





# November 2022

Sun Mon Tue Wed Thu Fri Sat

		1	2	3	4	5
6	7	8	9	10	11 	12  <i>Charity Benefit B-17 Oyster Pub (5:00 p.m. —1:00 a.m.)</i>
13	14	15	16	17 <i>EPPA General Meeting via Zoom (12:00 p.m.)</i>	18	19
20	21	22	23	24 	25 	26
27	28 	29	30			

## Out Mission Statement



Thanks for being a member of  
El Paso Paralegal Association

AN AFFILIATE OF



El Paso Paralegal Association serves as a resource for paralegals to further its members' development and advancement in the legal profession through higher paralegal standards, continuing legal education and self-regulation for all El Paso paralegals. El Paso Paralegal Association awards scholarships to students enrolled in the paralegal program at El Paso Community College, and offers reimbursement awards for members taking the National Association of Legal Assistants' Certification Exam and the Texas Board of Legal Specialization Certification Exam. Through its various efforts throughout the year, El Paso Paralegal Association also strives to encourage its members to participate in community service and charitable work opportunities through El Paso Paralegal Association's adopted charity, which is chosen each year by its members.

## Our Board

President	Yvette Duran ( <i>paralegalDL@labinotilaw.com</i> )
President Elect	vacant
VP of Programs	vacant
VP of Membership	Jessica Lucero ( <i>jlucero@epcounty.com</i> )
VP of Public Relations	Louise Elorreaga ( <i>lelo9228@aol.com</i> )
Secretary	Griselda Lasky ( <i>glasky@epcounty.com</i> )
Treasurer	Laura T. Juarez, CP ( <i>ltjuarez1007@gmail.com</i> )
Parliamentarian	Sandra Espinoza ( <i>sespinoza@umcel Paso.org</i> )
NALA Liaison	Laura T. Juarez, CP ( <i>ltjuarez1007@gmail.com</i> )
Newsletter Editor	Laura Aguilar, ACP ( <i>laguilar@bickerstaff.com</i> )

## Contact Us

El Paso Paralegal Association  
P. O. Box 7  
El Paso, Texas 79940  
[www.elppa.org](http://www.elppa.org)

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