

**BANKRUPTCY FOR THE NON-BANKRUPTCY
PRACTITIONER: HOW TO PREVENT
DISGORGEMENT OF FEES AND AUTOMATIC STAY**

101

African-American Lawyers Section

**James Q. Pope
The Pope Law Firm
Houston**

Friday, June 14, 2019
10:00 a.m. – 11:00 a.m.



James Q. Pope: Speaker Bio

James Q. Pope has been actively involved in the practice of bankruptcy since 2005. He began his legal career in at a small bankruptcy firm in Houston, Texas representing debtors in consumer bankruptcy matters and moved on to represent mortgage companies at a creditor bankruptcy firm in 2005. His firm has represented individuals and small businesses in chapter 7, chapter 11 and chapter 13 bankruptcy matters for more than a decade and is licensed in each of the four federal bankruptcy courts throughout the state. He has maintained his principal office in Houston since 2007.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

JOHN DOE, Debtor.

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Case No. 55-55555
(Chapter 13)

**APPLICATION TO EMPLOY LAW FIRM
AS SPECIAL LITIGATION COUNSEL PURSUANT TO 11 U.S.C. § 328(a)**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

**To the Honorable JUDGE ,
United States Bankruptcy Judge:**

JOHN DOE, (the "Movant") files this Application to Employ
LAW FIRM, INC. (the "Firm") as special litigation counsel pursuant to 11 U.S.C.
§ 328(a).

Application to Employ

1. The Movant desires to employ the Firm on a contingency fee basis to represent the Movant in analyzing and prosecuting a personal injury cause of action against third parties.
2. The employment of the Firm is required at this time to pursue the estate's claims. A contingency fee arrangement was negotiated as the estate does not have sufficient unencumbered funds with which to engage counsel and pursue litigation.

3. The Firm maintains offices at 1234 Office St. Suite 555, Houston, Texas 77777. The Firm's main telephone number is (713) 555-5555 and fax number is (713) 555-5556

4. The Movant has selected the Firm because its members have extensive experience in matters relating to personal injury causes of action. The Movant believes that the Firm can provide the estate with the required legal expertise to allow the Movant to handle this litigation effectively and prudently.

5. John Doe Attorney of the Firm will be designated as attorney-in-charge and will be responsible for the representation of the Movant by the Firm as set forth in this Application.

6. John Doe Attorney is admitted to practice before all courts in the State of Texas, John Doe Attorney has significant experience in handling litigation matters of this type. The Movant has selected John Doe Attorney because of his prior experience in personal injury causes of action. The Trustee believes that John Doe Attorney and the Firm are well qualified to represent the Movant.

7. The Firm will render professional services including, but not limited to:

- assisting the Movant in analyzing/prosecuting/etc. claims owned by the estate against third parties;
- preparing and filing such pleadings as are necessary to pursue the estate's claims against third parties;
- conducting appropriate examinations of witnesses, claimants and other parties in interest in connection with such litigation;
- representing the Movant in any adversary proceedings and other proceedings before the Court and in any other judicial or administrative proceeding in which the claims described herein may be affected;
- collecting any judgment that may be entered in the contemplated litigation;

- handling any appeals that may result from the contemplated litigation; and
- performing any other legal services that may be appropriate in connection with the prosecution of the litigation described above.

Statement Regarding Connections to the Case

8. The Firm has not previously represented the Movant prior to this bankruptcy case. Except as set forth above and in the attached affidavit, the Firm has no other connection with the Debtor, its creditors, any other parties in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee and are “disinterested persons” within the definition of Section 101(14) of the Bankruptcy Code on the matters for which it is to be engaged as special counsel. *See Attached Affidavit.*

Compensation

9. The Movant has negotiated a contingency fee arrangement with the Movant. Under the proposed agreement, the Firm will receive thirty five percent (35%) of any and all gross monies, interest or property recovered prior to filing suit. In the event that a suit is filed, the Firm will receive forty percent (40%) of any and all gross monies, interest or property which may be recovered. In the event that any Appeal is perfected by any party from the trial court, then the Firm shall receive fifty (50%) percent of any and all gross monies, interest or property which may be recovered. In addition, the Firm assesses separate administrative fees as follows: (insert any separate administrative fees)

10. A copy of the proposed agreement is attached as **Exhibit 1**.

11. In reaching his decision, the Movant has evaluated the estate’s available resources, the complexity of the litigation, the anticipated costs and the associated risks of the litigation. The Movant is concerned that the estate does not have sufficient resources to employ

counsel and any needed forensic expert assistance that may be needed on an hourly fee basis. Even if sufficient resources were available, the Movant believes that such resources should be preserved for creditors and non-litigation matters. Under the circumstances, the Movant believes that the terms of the proposed agreement are both reasonable and prudent. The estate incurs no additional administrative expense without a direct corresponding benefit.

12. The Firm has not received any funds from the Debtor or any other party in this case.

13. In the attached affidavit, the Firm has identified the amount and source of compensation to be paid to the Firm for services rendered in connection with its representation of the Movant in this case.

Accordingly, the Movant requests that the Court approve the retention of the Firm as special litigation counsel under 11 U.S.C. § 328(a) as set forth above and for such other relief as is just.

Dated: _____.

Respectfully submitted,

Law Firm

By: /s/ John Doe Attorney
John Doe Attorney
Texas State Bar No. _____
Southern District No. _____
1234 Office Street Suite 555
Houston, TX 77777
(713) 555-5555
(713) 555-5556(fax)
Proposed Special Litigation Counsel

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Bankr. R. 2014, this instrument was served by United States first class mail, with proper postage affixed, addressed to the parties set forth on the attached Service List on (insert date)

By: /s/ John Doe Attorney
John Doe Attorney

SERVICE LIST

List of Addresses

EXHIBIT 1

LAW FIRM

CONTINGENT FEE CONTRACT TO EMPLOY LEGAL COUNSEL SUBJECT TO BANKRUPTCY COURT APPROVAL

I, _____ (hereinafter, "undersigned") hereby employ _____ Law Firm, _____ (hereinafter, "Firm") and enter into this contingent fee contract (hereinafter, "contract") and agree as follows:

1. Scope of Representation

The Firm is hereby employed and retained by the undersigned to represent the undersigned in all causes of action and matters arising out of and resulting from an incident(s) which occurred on or about _____

2. Attorney's Fees

In consideration of such services rendered and to be rendered the undersigned hereby assign(s) and grant(s) unto the Firm thirty five percent (35%) of any and all gross monies, interest or property recovered prior to filing suit.

In the event that a suit is filed, the Firm shall be entitled to and is hereby granted and assigned forty percent (40%) of any and all gross monies, interest or property which may be recovered.

In the event that any Appeal is perfected by any party from the trial court, then the Firm shall be entitled to and is granted and assigned fifty (50%) percent of any and all gross monies, interest or property which may be recovered.

3. Expenses and Administrative Fees

The Firm is hereby authorized to obligate me/us for all necessary and reasonable expenses or charges deemed expedient or necessary in the investigation, presentation, prosecution, defense or trial of my/our claims.

The undersigned understands that in the event that any money interest or property is recovered, the undersigned shall be responsible for all expenses reasonably incurred by the Firm and any associated counsel.

Due to the specialized work required, the Firm assesses separate administrative fees as follows:

4. Binding Contract/Contractual Lien

This assignment and employment is binding upon the undersigned, the undersigned's heirs,

successors, representatives and agents. To secure the performance of the undersigned's obligations unto the Firm, the undersigned hereby assigns unto the Firm an undivided interest in the gross recoveries received by or on behalf of the undersigned for claims to which this contract applies. Further, the undersigned grants unto the Firm a contractual lien upon the gross recoveries received by or on behalf of the undersigned for claims to which this contract applies.

5. Case Settlement

The undersigned agrees that all settlement negotiations will be conducted by the Firm. The undersigned agrees that he or she will not work toward or obtain settlement without the approval of the Firm. The undersigned agrees that he or she must still pay the Firm's contractual fees as stated in this contract even if settlement/recovery was obtained by an entity or person other than the Firm.

In accordance with these agreements, the Firm agrees that no compromise or settlement of any claim will be made without the consent of the undersigned.

6. Bankruptcy Court Approval Required

The undersigned has advised that he is a debtor in a Chapter 13 Bankruptcy Case. Therefore, the Law Firm will seek court approval to represent the undersigned. Moreover, the undersigned agrees that the terms of any settlement and distribution may be changed by the Bankruptcy Court.

7. Ethics and Professional Conduct

Attorneys and staff at the Firm follow and implement all professional rules. The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar's Office of General Counsel will provide you with information about how to file a complaint. Please call (800) 932-1900 for more information.

AGREED:

EXHIBIT 2

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

(John Doe

Debtor.

§
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§

**Case No. 155-55555
(Chapter 13)**

**AFFIDAVIT OF PROPOSED COUNSEL
PURSUANT TO 11 U.S.C. § 329(a) AND BANKRUPTCY RULES 2014, 2016(b)**

LAW FIRM, (the "Firm"), proposed counsel for (the "Movant"), states that to the best of its knowledge, the Firm represents no interest adverse to the estate in the matters upon which the Firm has been or is to be engaged; that the Firm's employment has been and would be in the best interest of the estate; and that the attorneys in this firm are disinterested persons as defined under 11 U.S.C. § 101(14).

Except as set forth herein and the Application, the Firm has not represented the Debtor prior to or during this bankruptcy case. The Firm does not believe that any conflict exists which precludes its unbiased representation of the Movant and the estate in this case in its proposed role as special counsel.

Except as set forth herein and to the best of its knowledge, the Firm has no other connections with the Debtor, its creditors, any other parties in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee and is a "disinterested person" within the definition of Section 101(14) of the Bankruptcy Code on the matters for which it is to be engaged as special counsel.

Legal representation undertaken by the Firm includes (a) assisting the Movant in personal injury claims owned by the estate against third parties; (b) preparing and filing such pleadings as are necessary to pursue the estate's claims against third parties; (c) conducting appropriate examinations of witnesses, claimants and other parties in interest in connection with such litigation; (d) representing the Movant in any adversary proceedings and other proceedings before the Court and in any other judicial or administrative proceeding in which the claims described herein may be affected; (e) collecting any judgment that may be entered in the contemplated litigation; (f) handling any appeals that may result from the contemplated litigation; (g) and performing any other legal services that may be appropriate in connection with the prosecution of the litigation described above.

The Firm has agreed to the contingency fee arrangement as set forth in the application and Exhibit 1 to the Application. The agreement is the product of free and arms-length discussions. To date, the Firm has not received any funds from the Debtor, the estate or the Movant in connection with the proposed representation in this case.

The Firm has not promised, either directly or indirectly to share any compensation with any other persons, nor does the Firm have any agreement for payment of attorney's fees and expenses expect as stated herein.

Dated:]

Respectfully submitted,

Law Firm, "

By:

THE STATE OF TEXAS

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§

COUNTY OF HARRIS

SWORN TO AND SUBSCRIBED BEFORE ME, a notary public in the State of Texas, County of Harris, on this the 14 day of _____, 20__ by _____ to certify which, witness my hand and seal of office.

Notary Public in and for the State of Texas

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

JOHN DOE, Debtor.

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§

Case No. 55-55555
(Chapter 13)

ORDER AUTHORIZING EMPLOYMENT OF ATTORNEYS

The Court, having considered the Application to Employ Law Firm. (the "Firm") as special litigation counsel pursuant to 11 U.S.C. § 328(a) filed by John Doe, (the "Movant"), is of the opinion that the requested relief is in the best interest of the estate and its creditors; that the Firm represents no interest adverse to the estate in the matters upon which they are to be engaged and are disinterested persons within the definition of 11 U.S.C. § 101(14); and that the application should be approved. Accordingly, it is therefore

ORDERED THAT:

1. The contingency fee agreement attached as **Exhibit 1** is approved pursuant to 11 U.S.C. § 328(a).
2. The Firm is employed as special litigation counsel to provide all necessary legal services to the Movant in this case as set forth on **Exhibit 1** and in the Application.
3. John Doe Attorney is designated as attorney in charge for the representation by the Firm of the Movant in this case.
4. All applications for compensation shall be filed with the Court in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

SIGNED this ____ day of _____, 20__.

UNITED STATES BANKRUPTCY JUDGE

Bankruptcy for the Non-Bankruptcy Practitioner: Protecting your fees from disgorgement.

James Q. Pope

The Pope Law Firm

Ph: 713-449-4481

jamesp@thepopelawfirm.com



I FILED BANKRUPTCY!



Don't Panic!



What type of bankruptcy was filed?

Types of Bankruptcies

Liquidation

Chapter
7

Restructuring

Chapter
11

Chapter
13



You've determined the type of
bankruptcy....now what?



Automatic Stay

11 USC

[illegible][illegible]

*Stay is permanent upon discharge

A large, bold, red 'STOP' sign. The letter 'O' is replaced by a white hand symbol with fingers spread, set against a red circular background.

Automatic Stay Limited

No Prior Cases: Stay protection for the duration of the case

1 Prior Case w/n 12 months: Protection for 30 days

2 Prior Cases w/n 12 months: No automatic stay protection



Protect your fees from
disgorgement!



You **MUST** file an Application to Employ

- ▶ 11 U.S.C. §327 ; Fed. R. Bankr. P. 2014: Special counsel acting on behalf of a debtor or the estate **must** seek lawful employment from the Court while simultaneously following the required Bankruptcy Rules
- ▶ 327(e) of the Code, counsel employed “for specified special purpose, other than to represent the trustee in conducting the case” **must** be approved by the Court.



Disclose...Disclose...Disclose!!

The Fifth Circuit has noted that “case law has uniformly held that under Rule 2014(a), . . . full disclosure is a continuing responsibility . . . ,” and “failure to disclose is sufficient grounds to revoke an employment order and deny compensation.”

In re W. Delta Oil Co., Inc., 432 F.3d 347, 355 (5th Cir. 2005)



Requirements for Application to Employ

- ▶ state the specific facts showing the necessity for the employment,
- ▶ the name of the person to be employed,
- ▶ the reasons for the selection,
- ▶ the professional services to be rendered,
- ▶ any proposed arrangement for compensation
- ▶ to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.
- ▶ The application shall be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.





CONSULT A BANKRUPTCY ATTORNEY

James Q. Pope

The Pope Law Firm

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Houston, Texas 77007

Ph: 713-449-4481

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**BARRISTERS ON A BUDGET: MODERN DAY GUIDE
TO RUNNING A LAW PRACTICE**
African-American Lawyers Section

Jaclyn Y. Roberson
Law Office of Jaclyn Y. Roberson
San Antonio

Artessia House
Tess House Law, PLLC
San Antonio

Thursday, June 13, 2019
1:30 p.m. – 3:00 p.m.



Jaclyn Y. Roberson

Attorney Profile

Ms. Roberson founded The Law Office of Jaclyn Y. Roberson, PLLC, in March 2006. She focuses her energies in the areas of family law and estate planning, with an emphasis on child abuse cases involving families and Child Protective Services. Specifically, she handles divorce, child support, child custody, and adoption cases, in addition to representing children and parents in child abuse cases. She also assists clients with preparing estate planning documents and represents clients in probate and guardianship matters.

Ms. Roberson previously worked at the San Antonio Community Law Center, where she represented clients in every aspect of family law, including divorce, child support and child custody cases as well as complex probate matters. In February 2008, Ms. Roberson took a sabbatical from her law practice to represent the Texas Department of Family and Protective Services in child abuse and neglect cases. These experiences have given Ms. Roberson a rich and diverse perspective on the needs of families throughout the state.

As an attorney committed to protecting families, Ms. Roberson does not discriminate against clients based on race, gender, sexual orientation, disability or religion, nor does she support discrimination against her clients. Every case has its own set of unique and special circumstances and Ms. Roberson will take a sensitive and non-judgmental approach to the unique facts of your case. Additionally, Ms. Roberson takes your attorney-client privilege very seriously, and she ensures that her office protects your confidential information.

A San Antonio native, Ms. Roberson is a graduate of William H. Taft High School, The University of Texas at Austin and Tulane Law School in New Orleans, Louisiana. She is an active member of several organizations, including the San Antonio Black Lawyers Association, Children's Court Ad Litem Association and Exes for Texas, the alumni recruiting arm of The University of Texas.

Artessia “Tess” House

Attorney Profile

Attorney Artessia K. House manages Tess House Law, PLLC in San Antonio, Texas. Tess House Law, PLLC mission is to speak for those unable to speak from themselves. The firm represents victims in federal civil rights cases. On the local level, the firm represents children and parents in suits filed by the government and private family law matters.

Born the eldest of four children in San Antonio, Texas, Attorney House earned a B.A. in Political Science from St. Mary’s University. She earned her B.A. in Political Science from St. Mary’s University. Ms. House went on to earn a Texas Educator Certificate after fulfilling the requirements of the state of Texas and regulations of the State Board for Educator Certification. She later earned her J.D. from St. Mary’s University School of Law.

During her undergraduate and post-undergraduate years, Ms. House served on the National Executive Board for Delta Sigma Theta Sorority, Inc. as the Southwest Regional Representative and managed chapters in Texas, Louisiana, New Mexico, Arkansas, and Jamaica. Ms. House monitored issues pertaining to the use and security of intellectual property, investigated reports of hazing violations, and drafted disciplinary recommendations.

Ms. House started her professional career as a school teacher for San Antonio Independent School District. As a teacher she established and maintained excellent working relationships with parents and students through consistent demonstration of professionalism, preparedness, and work ethic. She also demonstrated sound knowledge of state rules and procedures.

While serving the community as a teacher, Ms. House decided to fulfill her dream of becoming an attorney. Ms. House attended St. Mary’s University School of Law where she served as Symposium Editor for *The Scholar: St. Mary's Law Review on Race and Social Justice*. As an editor, Ms. House organized one of the publications largest Immigration Law CLE events which provided information on the Defense of Marriage Act and sentencing advocacy for immigrants in federal court. Ms. House also served as a legal intern in the Staff Attorney’s Office for the Bexar County Civil District. Additionally, Ms. House gained sound knowledge of the Federal Torts Claims Act by interning for the Office of General Counsel for the United States Department of Veteran Affairs and was featured in Who's Who in San Antonio. She was also featured in *Raising the Bar*, the national newsletter for the Office of General Counsel.

Attorney House is a proud alum of Leadership State Bar of Texas and has served on the State Bar of Texas Child Abuse and Neglect Committee. She is an active member of the African America Lawyers Section where she serves as the San Antonio liaison and membership chair.

Barristers on a Budget: Modern-Day Guide to Running a Law Practice

2019 State Bar of Texas Annual Meeting

Tess House, Tess House Law, PLLC

Jaclyn Y. Roberson, Law Office of Jaclyn Y. Roberson, PLLC

Running a Law Firm Doesn't Have to Break the Bank.

What does a successful law firm look like? We once thought it required an expensive office space with luxurious furniture, a multi-person staff and a costly phone system. While that may still hold true for some lawyers, technological advances can now help a lawyer run a 7-figure law firm out of her basement. By making smart decisions in staffing, automation, human resources, case management, systems and technology, any lawyer can run a successful law firm.

Staffing

Reputation is not built on what you say you are going to do but rather the work that gets done. Ideally, a firm should be able to grow to the point where it runs itself.

Can You Afford NOT to Hire?

There is an insurmountable of reluctance attached to hiring. Take time to ask yourself certain questions:

1. Do I feel overwhelmed by the workload?
2. Is there enough time in the day, week, month to execute tasks in a timely manner?
3. Are you turning business away?

If you have tackled any of these questions, then you are probably ready to hire.

Calculating the Cost of Hiring

When deciding how much you can afford to pay for support staff considering the following factors:

1. Wages (Salary or hourly wage)
2. Benefits Package (medical coverage, retirement plan, disability coverage)
3. Employment and Payroll Taxes (federal and state unemployment, Social Security, Medicare)
4. Equipment and Supplies (desk, chair, business cards, pens, pencils)
5. Training (time, training materials)
6. Recruitment (costs and fees)

The rule of thumb is to not only attract talent but to also pay them fairly. Consider first speaking to peers in your field to assess the market rate for the type of position you are seeking to fill. There are also online databases that assist with calculating costs when hiring. Companies such as Indeed, Bureau of Labor Statistics, PayScale, Salary.com, and LinkedIn Salary are tools that can be used by employers and employees alike to determine pay levels.

“The rule of thumb is to not only attract talent but to also pay them fairly.”

There are a lot of pitfalls that come with making IRS tax payment on behalf of an employee, therefore, it is advised that you outsource this task to a payroll company. Allocating payroll to a payroll service frees up your time. Intuit QuickBooks offer programs that allow you to manage payroll yourself.

Here is a non-exhaustive list of payroll companies to consider:

1. Local Companies: consult databases like Google Business, Yelp, and Facebook to find payroll services in your service area.
2. OnPay: Base fee of \$36/mth
3. Intuit: Base fee of \$20.00 to \$109.00/mth
4. Gusto: Base fee of \$39.00 to \$149.00/mth
5. SurePayroll: Base fee of \$39.99/mth
6. Gusto: Plans as low as \$45/month
7. Upwork: Upwork allows employers to hire contract workers for recurring business tasks or for a specific project. Contact Upwork for pricing.
8. Sage: Sage not only handles taxes on a federal, state, and local level but it also integrates finances tracked using Office365. Contact Sage for pricing.
9. MyPayrollHR: Rather than paying “a la carte” for services, MyPayrollHR offers flat fee rates. Contact MyPayrollHR for pricing.
10. ADP: ADP is not the cheapest option, however, try to negotiate a competitive rate with the sales associate.

Finding Staff: When it comes to hiring do not overlook the people right in front of you. Referrals from employees, peers in the industry, friends, etc. are useful ways to build a list of candidates for job opportunities available in the firm. Employ the help of people you know for staffing solutions. An alternative to the referral track is to employ a third party to assist in the staffing process.

1099 vs. W-2

Staff generally fall under one of two categories: 1099 and W-2. The IRS, Department of Labor, and state agencies will reclassify employees if they find reason to believe employers have misclassified workers. There are penalties for treating W-2 employees as independent contractors, therefore, it is essential to understand the difference between the two. The term "1099" refers to form 1099 which is a form independent contractors receive at the end of the year and there are no taxes taken out of the payments issued to an independent contractor. Independent contractors are not employees. With a W-2 employee, taxes are taken out of the paycheck. Additionally, employers do not control the schedule of a 1099 while such management is permitted with a W-2. For more information on determining whether the needs and budget of your firm should staff a 1099 or W-2 employee consult information provided online by the Internal Revenue Service.

When you decide to hire consider staffing positions from the following list:

Legal Staff

- Senior Attorney
- Associate Attorney

Non-Lawyer Staff

- Business Manager
- Chief Financial Officer
- Courier
- Court Runner
- Executive Assistant
- File Clerk
- Human Resources
- Law Clerk
- Law Firm Administrator
- Litigation Support Professional
- Legal Assistant
- Legal Receptionist
- Paralegal
- Recruiter
- Sr. Paralegal
- Social Media Coordinator

Technology

The biggest favor we can do for our clients and ourselves is to become (or appear) tech-savvy. Today's clients do not want to receive materials in the mail or wait three weeks for an appointment with their lawyer; they want to receive documents electronically and have 15-minute video conferences.

Easy, inexpensive tech for law firms:

- Professional domain name
- Virtual office
- Answering service
- Dedicated office phone number
- Phone system
- Website
- Complete profiles on lawyer aggregate sites, e.g. AVVO and FindLaw
- Social media accounts
- Videos
- Newsletter
- Podcast

Automation: Set It and Forget It

Running a modern law firm requires completing what seems like an infinite number of daily tasks. When you run a small firm, these tasks can become overwhelming and will slow you down, causing your firm to appear non-responsive to outsiders. Luckily, those tasks we used to complete by hand can be automated to increase efficiency, improve office morale and grow revenue.

What is Automation?

Dictionary.com defines automation as “the technique, method, or system of operating or controlling a process by highly automatic

means, as by electronic devices, reducing human intervention to a minimum.”

In short, automation does the work you can't (or don't want to) do.

Examples of law firm tasks that can be automated:

- Calendaring
- Email
- Client communication
- Client intake process
- Time tracking
- File management
- Blogging
- Advertising analytics
- Document assembly
- Fee Agreement
- Client questionnaires
- Document signing
- Payment Plans
- Password storage and management

Useful Programs for Law Firm Automation:

- Legal case management software, e.g. Clio, MyCase, Practice Panther, Smokeball, Rocket Matter
 - These are comprehensive programs that allow you to do everything from billing to document management to collecting payments in one program.
- Project Management apps, e.g. Trello, Asana, Monday, Basecamp
 - These are generally not specific to law firms, but they do provide more flexibility and customization than traditional legal case management programs and allow integration with programs you may already be using.
- Workflow Automation, e.g. Zapier, IFTTT, Shortcuts
 - These are apps that allow different programs to work together
- Online Forms, e.g. Google Docs, Typeform

- Allows clients to answer questions online with the answers automatically sent to your firm.
 - Web Browser extensions, e.g. Canned Replies, Hellosign
 - Web browser extensions allow you to do everything from insert standard or repetitive email messages to signing legal documents within your email program.
 - Online calendaring, e.g. youcanbook.me, Calendly, Acuity
 - Calendaring websites can control your availability, accept payments and send appointment reminders via email or text.
 - Document signing, e.g. HelloSign, Docusign
 - Clients can sign online without having to use a printer. Reminders can also be sent to the client and the firm every day a document remains unsigned.
 - Online payments, e.g. LawPay
 - Clients can be sent a link for payment and use that same link every time they make a payment. You can also set up recurring payments for clients on payment plans. LawPay now accepts eCheck for clients who do not want to use credit cards.
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Case Management System

Each case that comes through the firm is comprised of several pieces of information including but not limited to client contact information, electronic correspondence, phone call logs, and documents. A client management system (or “CMS”) uses a central location to manage the firm’s cases. The methodology adopted by a firm to manage each client’s case helps manage the flow on the case from beginning to end.

Investing in a reliable case management system software is synonymous with modern-day lawyering. Electronic case management systems allow firms to streamline their data into one main portal.

There are ethical considerations in adopting a fully-integrated case management system. Imagine conducting an intake with a potential client only to later discover that the person walking through your door was an opposing party in a prior case? Consider the financial and professional expense incurred by missing or miscalculating an important deadline. Think about the time it takes for personnel to shuffle through paperwork each time you need information on the spot. A case

management system helps firms avoid landmines that lead to legal malpractice through automation.

Digital Case Management Systems May Offer Some or a Combination of the Following:

1. Message portals that accommodate communicate between the client and firm
2. Stopwatch for tracking billable hours
3. Documents
4. Calendaring
5. Statute of Limitation Tracking
6. IOLTA Accounting
7. Credit Card Processing Integration
8. Client data
9. Case Details
10. Contact Lists
11. Workflows
12. Task Lists
13. Settlement Calculations
14. Mobile App Technology
15. Generate and Disseminate Invoices
16. Track Leads and Conversion Rates of Potential Clients to
17. Expense Management

We suggest taking this list and highlighting features that are most important to your firm. Use this list as an interviewing tool when scouting for a case management system that best suits your needs.

Hard Files

The order in which client's files are managed should be systemized. If you opt to maintain hard files over software, continuity in how the files are organized can improve the efficiency of the firm. Start by creating a sample file that models that components of a what a fully-integrated file should look like. This sample serves as a reference for which other files can be modeled after. A sample file helps alleviate inconsistencies that may emerge as the firm grows. Adopt a system that is considerate of the area of law practiced and the needs of both the client and the firm.

Costs

Whether you choose to maintain a hard file system or invest in digital software, it's important to create a budget that outlines the costs of supporting such a system so you can regularly assess

the best budget-friendly system for your firm. The perk of living in a digital age is that the firm can price shop for materials. Many case management system software companies require the firm to schedule a telephonic consultation to gain access to subscription rates that range from monthly payments to yearly lump sums. Case management systems may also charge per user so consider which employees have access to the system and at what costs prior to signing-up. Take advantage of CMS deals such as free trial periods to test out the system. Electronic case management systems can start at \$10.00 per month on the low end and \$455.00 plus on the high end.

Systems

Everything you do in a law firm is a system. From checking voicemail messages to drafting a petition to initiating the discovery process, every task requires completion of a set of tasks. The problem for most lawyers who run small firms is that those systems reside in our heads, which requires mindreading by our staff. To increase efficiency, lower overhead and increase revenue, it is crucial to have a set of written systems specific to your law firm. Written systems create predictability in your firm. Tasks become second nature to your staff and allow them to bill more hours in a shorter amount of time. Your staff does not have to reach out to you every time a system needs to be completed, which frees you up to bill more hours or simply enjoy the fruits of labor by taking a break from the office.

“Everything you do in a law firm is a system.”

Written systems can be incorporated into an office manual that is distributed to every employee and updated as needed. Creating an office manual does not have to be expensive, but it will require a bit of your time in the beginning. You will need to write down a list of everything done in your office. From large to small, do not omit anything. Enlist the help of your staff to create a comprehensive list. From there, think of every task that needs to be completed in a particular system. We have included a worksheet created by Ontraport, a business automation company, that is a great tool to help you visualize every step of a system. Once you have written systems in place, decide how you want to store them. You can print copies at a local printing company, distribute it as a digital file, or both. The goal is to create a comprehensive manual that can guide even your greenest employee through the duties of her job.

Conclusion

Gone are the days where only a select few can build a successful firm. Using the tools we've discussed, it is much easier to do so with minimal capital.

THE PROCESS CREATOR

SECTION ONE: PROCESS OVERVIEW	
WHY: What is the purpose of this process?	
TITLE: What is this process called?	
SUMMARY: Describe the process.	
INTERVAL: How often does this process need to be completed?	

SECTION TWO: PROCESS EXECUTION	
STEP 1	
STEP 2	
STEP 3	
STEP 4	
STEP 5	
STEP 6	
STEP 7	
STEP 8	
STEP 9	
STEP 10	

SECTION THREE: REPORTING	
WHO: Who should this be reported to?	
WHAT: What are you expecting to see in the report?	
WHEN: When would the person reviewing this report like to get it?	
HOW: How should the report be delivered?	



**PRIVACY CONSIDERATIONS FOR LEGAL
PRACTITIONERS: PROTECTING CLIENT
CONFIDENTIALITY IN THE ERA OF GROWING
TECHNOLOGY DEPENDENCY**
African-American Lawyers Section

Toysha (TJ) Martin
Texas Education Agency (TEA)
Austin

Friday, June 14, 2019
11:00 a.m. – 12:00 p.m.





Toysha Jones (TJ) Martin is a licensed attorney with almost twenty years of diverse legal experience that includes criminal prosecution, corporate in-house counsel of Fortune Top 50 financial institution, and General Counsel of a Texas state agency. She currently serves as Senior Director of Contracts and Purchasing with the Texas Education Agency where she is responsible for the administration of approximately 400 contracts with an estimated value of over \$1 billion. She oversees staff responsible for the procurement of goods and services that support the educational, research, and business initiatives of the state's education agency.

Ms. Martin obtained her B.A. and M.A. from the historic Prairie View A&M University, her J.D. with honors from Thurgood Marshall School of Law at Texas Southern University in Houston, Texas and is licensed to practice law in Texas and Arizona. Ms. Martin completed the LBJ School of Public Affairs Executive Development Program at the University of Texas at Austin and is a Certified Texas Contract Manager.

During her spare time, Ms. Martin serves as her son's personal chauffeur to scouting, swimming, and karate; enjoys photography and speaking to youth regarding the benefits of education.

Privacy and Security 101 for Lawyers

Presented by
Toysha Jones Martin

Introduction

- High level overview
 - Raise awareness of the issues of privacy as it relates to the practice of law.
 - Think through how privacy principles apply to our business
 - Point out resources to help address data security challenges and protect client data.

Objectives

- Objective 1: Applicable Ethical and Legal Duties
- Objective 2: Pitfalls
- Objective 3: Proactive Steps and Remedies

Objective 1: Applicable Ethical and Legal Duties

Duty of Competence

Model Rules of Professional Conduct

Rule 1.1 Competence

Rule 1.4 Communication

Rule 1.6 Confidentiality of Information

Rule 5.1 Responsibility of a Partner or
Supervisory Lawyer

Texas Disciplinary Rules of Professional Conduct

Rule 1.01 Competent and Diligent Representation

Rule 1.03 Communication

Rule 1.05 Confidentiality of Information

Rule 5.03 Responsibilities Regarding Nonlawyer
Assistants

Objective 1: Applicable Ethical and Legal Duties

Duty of Competence

Model Rules of Professional Conduct

Rule 1.1 Competent Representation:

Comment 8

To remain competent, a lawyer must “...keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology...” benefits and risks

Texas Disciplinary Rules of Professional Conduct

Rule 1.01 Competent and Diligent Representation

Comment 8

“...strive to become and remain proficient and competent in the practice of law. To maintain the requisite knowledge and skill of a competent practitioner...”

Objective 1: Applicable Ethical and Legal Duties

Duty to Communicate

Model Rules of Professional Conduct

Rule 1.4 Communications:

Reasonable communication is necessary between lawyer and client...

“lawyers must exercise reasonable efforts when using technology in communicating about client matters.”

ABA Commission on Ethics 20/20 Report 105A (Aug. 2012)

Texas Disciplinary Rules of Professional Conduct

Rule 1.03 Communication

Keep the client reasonably informed to make informed decisions.

Objective 1: Applicable Ethical and Legal Duties

Duty of Confidentiality

Model Rules of Professional Conduct

Rule 1.6 Confidentiality of Information

New paragraph (c) “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to information relating the representation of a client.”

Lawyers may be required to take special security precautions to protect against the inadvertent or unauthorized disclosure of client information when required by an agreement with the client, by law, or when the nature of the information requires a higher degree of security.”

Texas Disciplinary Rules of Professional Conduct

Rule 1.05 Confidentiality of Information

“...lawyer shall not knowingly reveal confidential information of a client or former client.”

Objective 1: Applicable Ethical and Legal Duties

Duty of Confidentiality Page 2

- Factors to consider in making “Reasonable efforts”
 - sensitivity of the information
 - likelihood of disclosure if additional safeguards are not employed,
 - cost of employing additional safeguards,
 - difficulty of implementing the safeguards, and
 - Extent to which the safeguards adversely affect the lawyer’s ability to represent clients

Formal Opinion 477R

Model Rules of Prof’L Conduct R 1.6 cmt. (2016)

Objective 1: Applicable Ethical and Legal Duties

Duty Regarding Non-lawyer Assistants

Model Rules of Professional Conduct

Rule 5.3 Train Non-lawyer Assistants

Formal Opinion 08-451 and Comment 3 addresses outsourcing to non-lawyers outside the firm which includes “using an internet-based service to store client information.” Lawyers should communicate “directions appropriate under the circumstances to give reasonable assurances that the non-lawyer’s conduct is compatible with professional obligations of the lawyer.”

Texas Disciplinary Rules of Professional Conduct

Rule 5.03 Responsibilities Regarding Non-lawyer Assistants

“...shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer,” and “be subject to disciplinary actions for such person...”

Objective 1: Applicable Ethical and Legal Duties

- In addition to knowing the applicable ethical rules under the Model Rules and the Texas Disciplinary Rules of Professional Conduct, attorneys should also be aware of other legal and statutory obligations to protect confidential information.
 - Personal Identifying Information (PII)
 - Sensitive Personal Information (SPI)
 - Protected Health Information (PHI)

Objective 1: Applicable Legal and Ethical Duties

- Other statutory obligations
 - Federal:
 - Health Insurance Portability and Accountability Act of 1996 (HIPAA) 45 CFR §160 and 164
 - Federal Trade Commission Act 15 U.S.C. §§ 41-58
 - Payment Card Industry Data Security Standards (PCI DSS)
 - CJIS, FDA, FERPA, SSA, IRS
 - State:
 - Medical Records Privacy Act (Baby HIPAA) in Texas Health and Safety Code Chapter 181
 - Identity Theft Enforcement and Protection Act in the Texas Business and Commerce Code Chapter 521

Objective 1: Applicable Legal and Ethical Duties

- Federal:

- Health Insurance Portability and Accountability Act of 1996 (HIPAA) 45 CFR §160 and 164
 - Applicable to “covered entities” (health care providers, health plans, health care clearinghouses)
 - Privacy Rule, Security Rule and Breach Notification Rule
 - Applicable to Business Associates-
 - “Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in § 164.501 of this subchapter), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of protected health information from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person” 45 CFR 160.103 (ii)
 - Requires a Business Associate Agreement

Objective 1: Applicable Legal and Ethical Duties

- Federal:
 - Federal Trade Commission Act 15 U.S.C. §§ 41-58
 - Broad jurisdiction to address unfair and deceptive trade practices
 - Mid-90's started using this broad authority to investigate consumer privacy and data security issues
 - Also a good resources for information on protecting consumer information

Objective 1: Applicable Legal and Ethical Duties

- State:
 - Medical Records Privacy Act (Baby HIPAA) in Texas Health and Safety Code Chapter 181
 - Much more expansive definition of a “covered entity”
 - “...any person who...for financial or professional gain...engages...in the practice of assembling, collecting, analyzing, using, evaluating, storing or transmitting, protected health information.”
 - Training requirement 90days
 - Notice and authorization for electronic disclosure
 - Civil Money Penalty associated with violation

Objective 1: Applicable Legal and Ethical Duties

- State:
 - Identity Theft Enforcement and Protection Act in the Texas Business and Commerce Code Chapter 521
 - Defines and requires authorization to possess and use PII/SPI
 - Business duty to protect SPI
 - Sec. 521.053 Notification requirement following breach of security of computerized data
 - (b)“a person who conducts business in this state and owns or license computerized data that includes sensitive personal information shall disclose any breach of system security, after discovery or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonable believes to have been, acquired by an unauthorized person.”

Objective 1: Applicable Legal and Ethical Duties

Take a-ways:

- 1) Know your legal obligations regarding the category of data you maintain;
- 2) Review your engagement letter;
- 3) Provide adequate notice of how and to whom you communicate confidential information; and
- 4) Obtained written acknowledgement and consent

Objective 2: PITFALLS

- Areas that create known risks
 - Credit Card Payments
 - PCI-DSS Payment Card Industry Data Security Standards
 - Cloud-based Service Providers***
 - Multiple and mobile devices
 - Free Wi-Fi
 - Replacements/returning to default settings
 - Comply with NIST standards (National Institute of Standards and Technology)
 - Hackers and Ransomware
 - Phishing

Objective 2: PITFALLS

- Credit Cards
 - PCI
 - Payment Card Industry Data Security Standards (PCI DSS)
 - payment security standards that ensure all sellers safely and securely accept, store, process, and transmit cardholder data (your customers' credit card information) during a credit card transaction.

Objective 2: PITFALLS

- Four levels of PCI compliance with unique compliance requirements based on your annual total transaction volume
 - 6M/1-6M/20K-1M/under 20K
 - not complying with PCI standards could place you/your business at risk for data breaches, fines, card replacement costs, forensic audits and investigations
- “As a merchant, compliance renewal is required annually even if your firm is using a PCI Certified Service Provider such as [LawPay](#).” Law Pay Blog, *PCI Compliance*

9/16/15

Objective 2: PITFALLS

- Cloud-based Service Providers (CSP)
 - Raises complex confidentiality issues
 - Duty of Confidentiality
 - Duty to Communicate
 - Lawyer's obligation to ensure selected technology provides for the "reasonable expectation of privacy"

Objective 2: PITFALLS

- CSPs
 - Responsibilities Regarding Non-lawyers
 - CSP are non-lawyers who are given access to confidential client information
 - Lawyer must ensure non-lawyer is aware of duty of confidentiality

Objective 2: PITFALLS

- Large CSP are targets for hackers
 - What's your plan if your client data is subject to a hack or ransom?
 - DLP- Data Loss Prevention policies, procedures
 - Provide notice to clients in your retainer about contingencies?
 - Information backed up?
 - Cybersercurity Insurance coverage
 - is designed to mitigate losses from a variety of cyber incidents, including data breaches, business interruption, and network damage.

Objective 2: PITFALLS

- Multiple and mobile devices
 - Laptops, tablets, mobile phones, USB and portable drives
 - Everything that makes them useful also makes them dangerous from a security perspective
 - Easily lost or stolen
 - 70 % of data breaches resulted from loss or theft of off network equipment

“...hackers hold a strategic advantage because of the growing numbers of devices and associated vulnerabilities. Every access point is a potential breach.”

Blogger [Dan Steiner](#) CIO by IDG

Objective 2: PITFALLS

- Hackers and Ransomware
 - Issue for both big and small firms and solos
 - Larger firms aren't so lucky
 - Wall Street Journal reported in March 2016 large firms including Cravath Waine & Moore LLP and Weil Gotschal & Manges LPP were subject to hacks
 - 25% of firms with 500 or more lawyers admitted experiencing some type of breach
 - Significant down turn and loss of billable hours AND loss of important files/documents

Objective 2: PITFALLS

- Hackers and Ransomware
 - Seeing litigation by clients against firms for inadequate cybersecurity
 - *Jason Shore and Coinabul, LLC v. Johnson Bell, LTD*

“Whether an attorney transfers or stores confidential client information using password-protected corporate e-mail systems, “cloud computing,” third-party off-site network administrator vendors, third-party hosted e-discovery management platforms, or a variety of other electronic data transfer or data storage solutions available through the Internet, the attorney inevitably faces an inherent risk that confidential client information will be susceptible to theft by a hacker or by an unscrupulous third-party employee. In the absence of reasonable, preventative, and precautionary measures, the lawyer also risks losses for the firm and its clients associated with such a theft.”

Johnson Bell

Objective 3: Proactive Steps and Remedies

Become a technology expert or hire one.

Firewalls, operating systems, security software, passwords and encryption

What's reasonable today is quickly obsolete/outdated.

Objective 3: Proactive Steps and Remedies

- ENCRYPTION ENCRYPTION ENCRYPTION

- Making readable texts or data unreadable
- To make it readable (decryption) one must have the “key” or password
- Satisfies your ethical duty to protect client information
- This is now a standard security measure
 - Arguable that you are negligent if you are not meeting the industry standard for security

Objective 3: Proactive Steps and Remedies

- Carefully select third party service providers who have access to confidential information
- Obtain client consent in advance to use third party service providers
- Spell out risks in retainer letter
- Implement a notification process in case of a breach
- Cybersecurity Insurance

Important factors to consider:

- Start with Security
 - Collect and keep only what you need.
 - When you no longer need it securely dispose of it.
- Control access to data sensibly
 - Not everyone on your staff needs unrestricted access to confidential information
 - Put controls in place based on a “need to know” basis
- Require multifactor authentication (MFA) for passwords
- Securely store and transmit SPI
 - Use industry-tested and accepted methods

Due Diligence:

- Understand the Nature of the threat.
- Understand how client confidential information is transmitted and where it is stored.
- Understand and use reasonable electronic security measures.
- Label client confidential information.
- Train lawyers and nonlawyer assistants in technology and information security.
- Conduct due diligence on vendors providing communication technology.

Reference Materials

- Model Rules of Professional Conduct (2016)
- Texas Disciplinary Rules of Professional Conduct
- ABA *Formal Opinion 477R* (2017)
- ABA *Commission on Ethics 20/20 Report 105A* (Aug. 2012)
- ABA, *Using Online Service Providers- Where the Duty of Confidentiality Reigns* by Kathryn A. Thompson (Sept./Oct. 2011)
- ABA, *Encryption Made Simple for Lawyers* by David G. Ries and John W. Simek (Nov./Dec. 2012)
- State Bar of Texas, *Encryption Basics for Lawyers* (2014)
- PCI DSS Quick Reference Guide

Questions?

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**SPECIAL IMMIGRANT JUVENILE STATUS (SIJS):
CONSIDERATIONS FOR STATE COURT
PRACTITIONERS REPRESENTING UNDOCUMENTED
CHILDREN IN TEXAS**
African-American Lawyers Section

Lynette M. Boggs-Perez
Lynette Boggs Law & Mediations, PC
San Antonio

Marlyn Moreno
Moreno Law Firm, PLLC
San Antonio

Friday, June 14, 2019
9:00 a.m. – 10:00 a.m.





Special Immigrant Juvenile Status (SIJS)

CONSIDERATIONS FOR STATE COURT PRACTITIONERS WHO REPRESENT
UNDOCUMENTED JUVENILES

Lynette Boggs-Perez, JD, MPA
Attorney & Mediator

What is SIJS?

- It's a form of immigration protection for children (defined as under 21 and unmarried)
- Who have been subject to **ABUSE, NEGLECT OR ABANDONMENT**
- It allows the child to self-petition to remain in the United States
- To obtain Lawful Permanent Residency (LPR)
- Provides a government-issued photo ID
- Provides employment authorization

Authority

- **The Immigration and Nationality Act (INA)** at § 101(a)(27)(J), codified at 8 USC § 1101(a)(27)(J)
- **The Trafficking Victims Protection and Reauthorization Act (TVPRA) of 2008**, Public Law 110-457, 122 Stat 5044

PRECONDITION

- A child must have been subject to a state juvenile proceeding in which **findings were made** regarding parental *abuse, abandonment, or neglect* or a similar basis under state law.
- The same proceedings may be utilized to request a determination that of **viability of parental reunification** and **best interests**.
- The state court proceedings may, but are not required to, result in the child being placed in the custody of a guardian, conservator, or state agency such as CPS.
- Child can be accompanied or unaccompanied

What is a
“juvenile
court” for
purposes of
SIJS?

“A COURT WITH
JURISDICTION OVER THE
CARE AND CUSTODY OF
JUVENILES.”

8 CFR

What is considered a “juvenile court” for SIJS purposes?

- Courts of General Jurisdiction (District Courts and some County Courts at Law)
- Child Protection Courts
- Probate Courts (Guardianship)
- Juvenile Courts (Delinquency)

What types of proceedings can predicate findings be made in Texas?

- Declaratory Judgment
- SAPCR (both CPS and Non-CPS)
- Adoption
- Guardianship (Capacity) Case
- Juvenile Offense Case

State Law definitions

- The terms “abuse,” “neglect,” and “abandonment” are NOT defined by the INA. State law is what the courts use to make findings that satisfy SIJS preconditions.
- Abuse – TFC § 261.001(1)
- Neglect – TFC § 261.001(4)
- Abandonment – TFC § 152.102(1)

Sec. 261.001. DEFINITIONS. In this chapter:

(1) **"Abuse"** includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section [21.02](#), Penal Code, indecency with a child under Section [21.11](#), Penal Code, sexual assault under Section [22.011](#), Penal Code, or aggravated sexual assault under Section [22.021](#), Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section [43.01](#), Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section [20A.02](#)(a)(7) or (8), Penal Code, prostitution under Section [43.02](#)(b), Penal Code, or compelling prostitution under Section [43.05](#)(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section [43.21](#), Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter [481](#), Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter [481](#), Health and Safety Code;

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section [43.25](#), Penal Code;

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section [20A.02](#)(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or

(M) forcing or coercing a child to enter into a marriage.

(4) "Neglect":

(A) includes:

- (i) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
 - (ii) the following acts or omissions by a person:
 - (a) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
 - (b) failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
 - (c) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;
 - (d) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or
 - (e) placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1) (E), (F), (G), (H), or (K) committed against another child;
 - (iii) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or
 - (iv) a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and
- (B) does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:
- (i) the child has a severe emotional disturbance;
 - (ii) the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
 - (iii) the person has exhausted all reasonable means available to the person to obtain the mental health services described by Subparagraph (ii).



Sec. 152.102. DEFINITIONS. In this chapter:

(1) "**Abandoned**" means left without provision for reasonable and necessary care or supervision.

PREDICATE ORDER WITH FINDINGS:



- (1) The child is dependent upon the juvenile court or has been legally committed to or placed in the custody of an agency or department of a state or individual or entity appointed by the juvenile court
- (2) The child's reunification with one or both parents is not viable due to **abuse, neglect, abandonment** or a similar basis found under state law
- (3) It is not in the best interest of the child to be returned to her or her parents previous country of nationality or country of last habitual residence



Lynette Boggs-Perez
EMAIL ADDRESS:

lynette@lynetteboggs.com

**NOTICE: THIS DOCUMENT
CONTAINS SENSITIVE DATA.**

CAUSE NO. _____

IN THE MATTER OF	§	IN THE DISTRICT COURT
	§	
JUVENILE JOHN DOE,	§	_____TH JUDICIAL DISTRICT
	§	
A CHILD	§	BEXAR COUNTY, TEXAS

**MOTION REQUESTING FACTUAL FINDINGS AND ORDER REGARDING MINOR'S
ELIGIBILITY FOR SPECIAL IMMIGRANT JUVENILE STATUS**

JUVENILE JOHN DOE, through counsel, requests a hearing so that a record of factual findings can be made to enable him to petition the U.S. Citizenship and Immigration Services ("CIS") for Special Immigrant Juvenile Status ("SIJS") pursuant to Section 101(a)(27)(J) of the Immigration and Nationality Act (the "INA"). The relevant provision of the INA is codified at 8 U.S.C. § 1101(a)(27)(J) (2010) (attached as Exhibit A).

JUVENILE JOHN DOE objects to the associate judge hearing this matter.

AUTHORITY

A Special Immigrant Juvenile is an unmarried person under the age of twenty-one who is in the United States; and who has been declared dependent on a juvenile court located in the United States or whom a juvenile court has legally committed to, or placed in the custody of, an agency or department of a State or of an individual or entity appointed by a State or juvenile court; and whose reunification with one or both parents is not viable due to abuse, neglect, abandonment or a similar basis found in state law. 8 U.S.C. § 1101(a)(27)(J).

Immigration regulations define the term “juvenile court” as “a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a).

For JUVENILE to be eligible to apply to CIS for SIJS, a juvenile or State court must first make several findings of fact. Under the law, the juvenile or State court does not make any immigration decisions, but rather, makes factual findings concerning the child. The juvenile or State court – and not CIS – makes these findings because these are the courts with expertise in juvenile matters. The required findings are as follows:

1. The child is dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States within the meaning of 8 U.S.C. § 1101(a)(27)(J);
2. The child’s reunification with one or both parents in the country of origin is not viable due to abuse, neglect, abandonment, or a similar basis found under State law within the meaning of 8 U.S.C. § 1101(a)(27)(J); and
3. It would not be in the child's best interest to be returned to the child's or parent's previous country of nationality or country of last habitual residence within the meaning of 8 U.S.C. § 1101(a)(27)(J).

Factual findings by this Court will not entitle JUVENILE to SIJS or to lawful permanent residence in the United States. Rather, the Court’s findings are a prerequisite to filing a petition for immigration relief. *See* 8 C.F.R. § 204.11(d)(2). Without the requested court order, JUVENILE cannot petition CIS for SIJS. *Id.*

PRAYER

JUVENILE JOHN DOE respectfully requests that the Court issue an order making the appropriate findings of fact to enable him to petition for SIJS and apply for lawful permanent residence. JUVENILE JOHN DOE further prays the Court to set this matter for a hearing and prays for general relief.

LYNETTE BOGGS LAW & MEDIATIONS, PC
310 S. Saint Mary's St., Suite 1910
San Antonio, TX 78205



Lynette Boggs-Perez
Attorney for: JUVENILE
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Notice of Hearing

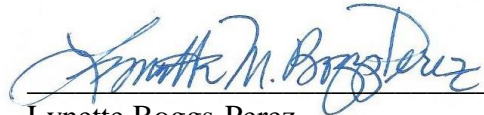
The above Motion is set for hearing on **November 27, 2018 at 9:30 A.M.** in the 436th Juvenile District Court, 235 E. Mitchell, San Antonio, TX 78210.

SIGNED on _____.

Presiding Judge or Clerk

Certificate of Service

I certify that a true and correct copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on November 16, 2018.

A handwritten signature in blue ink, appearing to read "Lynette M. Boggs-Perez", is written over a horizontal line.

Lynette Boggs-Perez
Attorney for JUVENILE

**NOTICE: THIS DOCUMENT
CONTAINS SENSITIVE DATA.**

CAUSE NO. _____

IN THE MATTER OF	§	IN THE DISTRICT COURT
	§	
JUVENILE JOHN DOE,	§	_____TH JUDICIAL DISTRICT
	§	
A CHILD	§	BEXAR COUNTY, TEXAS

**ORDER REGARDING MINOR’S ELIGIBILITY FOR
SPECIAL IMMIGRANT JUVENILE STATUS (SIJS)**

On _____ the Court heard the Motion of JUVENILE JOHN DOE requesting findings of this Court as a prerequisite for a future petition for Special Immigrant Juvenile Status to the U.S. Citizenship and Immigration Services pursuant Section 101(a)(27)(J) of the Immigration and Nationality Act. The court makes the following findings:

THE COURT FINDS that the minor JUVENILE JOHN DOE was born in (foreign country) on January X, 200X and is a citizen and national of (foreign country).

THE COURT FURTHER FINDS that this Court has jurisdiction under Texas law “to make judicial determinations about the custody and care of juveniles” within the meaning of Section 101(a)(27)(J) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101(a)(27)(J), and 8 C.F.R. § 204.11(a). JUVENILE remains under this Court’s jurisdiction.

THE COURT FURTHER FINDS that JUVENILE is dependent upon the Court or has been legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States within the meaning of INA Section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

THE COURT FURTHER FINDS that reunification with one or both of JUVENILE's parents is not viable due to abuse, neglect and specifically abandonment as defined in the Texas Family Code § 152.102(1) and as prescribed in INA Section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J).

THE COURT FURTHER FINDS that it is not in JUVENILE's best interest to be returned to his or his parents' previous country of nationality or country of last habitual residence – (foreign country) – within the meaning of INA Section 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J). It is in JUVENILE's best interest to remain in the United States.

Signed on _____

PRESIDING JUDGE

MORENO LAW FIRM

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Immigration Relief for Abused Children

SPECIAL IMMIGRANT JUVENILE STATUS

Special Immigrant Juvenile Status

- **Special Immigrant Juvenile (“SIJ”) Status** is an immigration classification for certain foreign children present in the United States who have been abused, neglected or abandoned by a parent.
- SIJ Status allows the minors to adjust status to that of [Lawful Permanent Resident](#) despite unauthorized entry or unlawful presence in the United States.

- Congress initially created (SIJ) classification to provide humanitarian protection for abused, neglected, or abandoned child immigrants eligible for long-term foster care.
- This protection evolved to include children who cannot reunify with one or both parents because of abuse, neglect, abandonment, or a similar basis under state law.
- While there is no longer a requirement that a child be found eligible for long-term foster care, **a juvenile court finding that reunification with one or both parents is not viable is still a requirement for SIJ classification**

Children eligible for SIJ classification may include those who are:

- In a state's child welfare system;
- Currently (or were previously) in federal custody due to their undocumented status; or
- Living with a foster family, an appointed guardian or the non-abusive custodial parent.

Background

- Congress first established the SIJ immigrant visa classification in the Immigration Act of **1990**. Since then, Congress has enacted several amendments.

SIJ: Latest Amendments

The Trafficking Victims Protection and Reauthorization Act (TVPRA 2008)

- Removed the need for a juvenile court to deem a child eligible for long-term foster care and **replaced it with a requirement that the juvenile court find that reunification with one or both parents is not viable due to abuse, neglect, abandonment.**
- Expanded eligibility to include children whom a juvenile court has placed under the custody of a person or entity appointed by a state or juvenile court

SIJ: Latest Amendments

- **Provided age-out protections** so that SIJ classification may not be denied to anyone, based solely on age, **who was under 21 years of age on the date that he or she properly filed the SIJ petition**, regardless of the petitioner's age at the time of adjudication
- **Simplified the consent requirement:** The Secretary of Homeland Security now consents to the grant of SIJ classification instead of expressly consenting to the juvenile court order

Legal Authorities

- [INA 101\(a\)\(27\)\(J\); 8 CFR 204.11](#) – Special immigrant status for certain children declared dependent on a juvenile court (special immigrant juvenile)
- [INA 203\(b\)\(4\)](#) – Certain special immigrants
- [INA 204\(a\)\(1\)\(G\)\(i\)](#) – Petitioning procedure
- [INA 245\(h\)](#) – Adjustment of special immigrant juveniles
- [INA 287\(h\)](#) – Protecting abused juveniles
- [8 CFR 205.1\(a\)\(3\)\(iv\)](#) – Reasons for automatic revocation
- [8 CFR 205.2](#) – Revocation on notice

Determining Eligibility

General Eligibility Requirements for SIJ Classification

Physically present in the United States

Unmarried

Under the age of 21 on the date of filing the Petition for Amerasian, Widow(er), or Special Immigrant ([Form I-360](#))

Juvenile court order (or orders) issued in the United States that meets the specified requirements

U.S. Department of Homeland Security consent

U.S. Department of Health and Human Services (HHS) consent, if applicable

Age-out Protections

In accordance with the Special Immigrant Juvenile Perez-Olano Settlement Agreement, an applicant who is otherwise eligible will remain eligible even if he or she:

- Turns 21 years of age after filing the SIJ petition (Form I-360) but prior to the USCIS decision on the SIJ petition, and/or
- Ages out of the juvenile court's jurisdiction prior to filing the SIJ petition (Form I-360).

Juvenile Court Order

To be eligible for SIJ classification, a juvenile court in the United States must have issued order (or orders) with the following findings:

- **Dependency or Custody** –
- **Parental Reunification** – Declares, under the state child welfare law, **that the petitioner cannot reunify with one or both of the petitioner's parents** prior to aging out of the juvenile court's jurisdiction due to abuse, neglect, abandonment, or a similar basis under state law; and
- **Best Interests** – Finds that it would not be in the petitioner's best interest to be returned (to a placement) in the petitioner's, or his or her parent's, country of nationality or last habitual residence.

Validity of Order

- The **juvenile court order must have been properly issued under state law** to be valid for the purposes of establishing eligibility for SIJ classification. This includes the need for the juvenile court to **follow their state laws on jurisdiction**. For example, **a juvenile court may not be able to take jurisdiction and issue a dependency or custody order for a juvenile who is 18 years of age or older even though the juvenile may file his or her petition with USCIS until the age of 21**. There is nothing in USCIS guidance that should be construed as instructing juvenile courts on how to apply their own state law.

USCIS Consent

- The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) simplified but did not remove the Department of Homeland Security (DHS) consent requirement.
- In order to consent, **USCIS must review the juvenile court order to conclude that the request for SIJ classification is bona fide, which means that the juvenile court order was sought to obtain relief from abuse, neglect, abandonment, or a similar basis under state law, and not primarily or solely to obtain an immigration benefit.**

HOW TO FILE A PETITION FOR SIJ CLASSIFICATION

- [Form I-360, Petition for Amerasian, Widow\(er\), or Special Immigrant](#)
- **Evidence of age.** You must submit one of the following with certified English translation, if applicable:
 - *Birth certificate;*
 - *Passport;*
 - *Official identity document issued by a foreign government*
 - *Other documents that satisfactorily establish age.*
- **Valid juvenile court order(s)** that make the required determinations and are supported by evidence of the factual basis for the court's determinations.
- Written [consent](#) from the U.S. Department of Health and Human Services ([HHS](#)) if you are in HHS custody and the juvenile court order also changes your custody status or placement. Note: Once the minor is released from HHS or ICE custody they are given this consent letter.
- [Form G-28](#), Notice of Entry of Appearance as Attorney or Accredited Representative

After you file your Form I-360, USCIS will:

- Send you a Notice of Action, which is a receipt showing the official filing date and receipt number. USCIS will adjudicate the petition within 180 days unless additional evidence is required to make a determination on the case.
- You can check the status of the SIJ application by typing the I-360 receipt number in [“My Case Status”](#) at the USCIS website.

What if the I-360 is denied?

A petitioner may submit a Notice of Appeal or Motion ([Form I-290B](#)), with the appropriate filing fee or a request for a fee waiver, to file:

- An [appeal](#) with the Administrative Appeals Office (AAO);
 - A [motion to reconsider](#) a USCIS decision (made by the AAO, a field office, or a service center); or
 - A [motion to reopen](#) a USCIS decision (made by the AAO, a field office, or a service center).
-
- The petitioner must file the appeal or motion within [30 days](#) of the denial or dismissal, or [33 days](#) if the denial or dismissal decision was sent by mail.
 - If the appeal relates to a revocation of an approved SIJ petition, the appeal must be filed within 15 calendar days after service of the decision. There is no exception to the filing period for appeals and motions to reconsider.
 - For a motion to reopen, USCIS may excuse the petitioner's failure to file before this period expires where the petitioner demonstrates that the delay was reasonable and beyond his or her control. See [8 CFR 103.5\(a\)\(1\)\(i\)](#).

ADJUSTMENT OF STATUS TO LAWFUL PERMANENT RESIDENT

- If an immigrant visa is immediately available, the minor may file Form i-360 (SIJ) and Form i-485 Application for Lawful Permanent Resident Status at the same time.
- To check if an immigrant visa is available, check the fourth (4) employment category in the “[VISA BULLETIN](#)” published by the Department of State’s website every month. “C” indicates that the visa is immediately available.
- The SIJ status holder must still be admissible under INA 212(a) to be able to adjust status as resident.
- **NOTE:** Biological or former adoptive parents of a child who obtains LPR status through SIJ classification can never be granted any immigration benefits through the SIJ child.

Remember:

The requirements for adjustment of status are different for SIJ visa holders. USCIS have instructions for every application on their website. Do not forget to contact an experienced immigration attorney to mentor you. We are all happy to help.

Role of Child Welfare Professionals

Child welfare professionals are uniquely positioned to identify and assist victims of child abuse, neglect or abandonment who may be eligible for SIJ classification. Child welfare professionals may assist by:

- Referring the child's case to an immigration attorney or accredited representative;
- Providing assessments and reports to assist the juvenile court in making findings that may establish SIJ eligibility; and
- Collecting important documents, such as proof of the child's age and identity

Resources

Questions to USCIS

- State juvenile courts and child welfare agencies can submit general questions or outreach requests to USCIS-IGAOutreach@uscis.dhs.gov.

General SIJ Information

- Visit the “Humanitarian” section of the USCIS Website www.uscis.gov/humanitarian.

Reporting Crimes

- Contact DHS Homeland Security Investigations at (866) DHS-2-ICE for concerns regarding human trafficking.

General Information on Adjustment of Status

- <https://www.uscis.gov/green-card/green-cardprocesses-and-procedures/adjustment-status>

Questions Regarding a Case

- You may ask USCIS about a case by calling (800) 375-5283, or making an INFOPASS appointment at <https://infopass.uscis.gov>.

Check Case Status

- Check the status of a case by visiting the “[Check your Case Status](#)” section of www.uscis.gov.

THANK YOU