

HOW TO TRAIN A TITLE EXAMINER

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Biographical Sketch

Mari C. Haley is a solo practitioner and maintains offices in San Antonio and Kingsland, Texas. She received a Bachelor of Arts degree from Baylor University in 1976 and is a 1985 graduate of Baylor Law School. Her practice is primarily focused on the preparation of title opinions and documents related to oil and gas exploration and development.

Since 2008 she has served on the Joint Editorial Board for the development of the Texas Title Examinations as one of the members appointed by the Oil, Gas and Energy Resources Law Section of the State Bar of Texas.

Since 1998 she has been Board Certificated in Oil, Gas and Mineral Law by the Texas Board of Legal Specialization. She is also licensed to practice law in the State of Oklahoma.

She is a member of the State Bar of Texas; the San Antonio Bar Association and its Natural Resource Section; the State Bar of Oklahoma and its Mineral law Section; and the Highland Lakes Bar Association where she is serving her third term as president of the association.

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Philip C. Mani received a Bachelor of Arts in Geology from Trinity University in 1980, a Master's of Science in Geology from Texas A&M University in 1983, and a Juris Doctor from St. Mary's University School of Law in 1990. He is Board Certified, Texas Board of Legal Specialization, in Oil, Gas and Mineral Law (since 1996), a member of the Oil, Gas and Energy Resources Law Section of the State Bar of Texas and the State Bar of Texas (since 1990), the State Bar of Pennsylvania (since 2009), the State Bar of Colorado (since 2012), and the San Antonio Bar Association.

Mr. Mani's oil and gas industry career began in 1980 as a Petroleum Geologist and later as a Petroleum Landman before becoming an Oil and Gas Attorney in 1990 working with horizontal drilling in the Austin Chalk trend. Mr. Mani is the founding partner of Mani Little & Wortmann, PLLC in San Antonio, Texas. He counsels oil and gas explorationists and developers of all sizes and in every producing area in Texas and Pennsylvania. He advises in day-to-day problem-solving associated with title examination, title curative, legal research, and issues involving horizontal drilling, forming pooled units and allocation units. Mr. Mani's work often begins at inception of projects in developing lease forms, leasing, title research and examination and, occasionally, working with the regulatory agencies involved with writing and/or interpreting regulations in conventional and unconventional plays. His extensive experience with horizontal drilling, title examination and the formation and reformation of pooled units covers rural areas through suburban, urban and industrial areas throughout Texas. Mr. Mani has also successfully tried cases concerning the construction and interpretation of deeds and wills involving mineral/royalty ownership and conveyancing.

Mr. Mani is also a member of the American Association of Professional Landmen, San Antonio Association of Professional Landmen, Houston Association of Professional Landmen and the Fort Worth Association of Professional Landmen. He is Registered Professional Geologist No. 108 in Arkansas (since 1985), and Registered Professional Geoscientist No. 6864 in Texas (since 2004).

Mr. Mani is especially proud to serve as Co-Founder and Co-Trustee of the Robert and John Ratliff Scholarship and Cancer Research Fund, a charitable organization formed for the purpose of assisting Fort Worth area Landmen and their families. He is also a member of the Trinity University Alumni Association, the Association of Former Students at Texas A&M, a society member of several historical and natural history museums in Texas, and a member of the Meteoritical Society. In his free time, Mr. Mani continues to be very active in public education and outreach in the fields of Geology and Meteoritics.

Biographical Sketch

Randall K. Sadler, Managing Partner of Sadler Law Firm LLP, received his J.D. from South Texas College of Law in 1978 and his B.S., with honors, from East Texas State University in 1975. He also attended the Jesse H. Jones Graduate School of Administration at Rice University in 1988. Before founding Sadler Law Firm, he was employed as a landman at Mitchell Energy & Development Corp. and Cashco Energy Corp. Subsequent to founding the firm, Randy served as the interim general counsel for North Central Oil Corporation, while maintaining a private practice. Randy is a member of the State Bar of Texas, the Oil, Gas and Energy Resources Law Section and the Alternative Dispute Resolution Section of the State Bar of Texas, a member of the College of the State Bar of Texas, and a member of the Rocky Mountain Mineral Law Foundation. Randy has been Board Certified in Oil, Gas and Mineral Law by the Texas Board of Legal Specialization since 1986. He has been a lecturer at various landmen educational programs and State Bar of Texas continuing legal education programs. He has written several published papers on oil and gas law and land title issues. Randy served on the planning committee for the Oil, Gas & Mineral Titles Examination course in 2015 and 2016.

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HOW TO TRAIN A TITLE EXAMINER

I. INTRODUCTION:

Although training a new title examiner in the present oil and gas environment may not be the first thing on your list of things to do, this shall pass and sunnier days for our industry will arrive. Since your practice may not be as hectic as it was a couple of years ago it is a good time to plan for the future.

This paper is intended to assist the experienced oil and gas title examiner and offers information to augment your training of a new oil and gas title examiner. The training information is addressed in a general narrative form and is offered as an overview rather than a comprehensive guideline.

II. STEPS:

The steps in training a title examiner outlined here are by no means the only or even a definitive method, but reflect the knowledge gained by the authors while training many examiners over the years. The process has evolved as the law and technology have changed and will no doubt continue to do so for the same reasons.

A. Selection and Evaluation:

The first task is selecting and evaluating a candidate for training. A title examiner is in some ways a one-trick pony; the primary skills utilized by the examiner during his or her professional career will be critical reading, analysis, problem solving and writing. By necessity all law graduates will have developed those skills to some degree, but a candidate with an undergraduate degree in the liberal arts will generally have a natural disposition for critical reading. Also a candidate who enjoys mathematics or puzzles may already developed good problem solving skills. Generally a person who is able to do professionally what that he or she is most inclined to do, will be more successful than the person who is swimming upstream. It is important to understand your candidate's background and why he or she wants to be a title examiner. Although everyone graduating from law school wants a job, everyone is not suited to be a title examiner.

In addition to schooling you will need to consider the prior training and experience of your candidate. A candidate who has worked as a landman or as an abstractor with a title plant may have developed some of the skills of a title examiner and require less training. If your candidate has already worked as a title examiner it may be necessary to overcome work practices, procedures and the creation of a final product that are incompatible with your own. However, if the candidate is willing to adopt researching and writing

techniques compatible with your method of title examination, he or she may become productive more quickly than someone with less experience. However, even one who has expressed a willingness to embrace "re-training" may be reluctant to share how he or she analyzes documents or formulates comments and requirements. That reluctance can interfere with training and ultimately result in it taking longer to become productive.

Conversely, although the less experienced or inexperienced candidate may not have habits or previously learned incompatible techniques to overcome, he or she will require more training.

B. The Basics:

If your trainee has no prior land experience you will need to start with the basics. Before a trainee can examine title he or she must understand what comprises "title". All attorneys will have taken a course in Texas property in law school, however, most if not all will require a refresher course. You will need to explain that title is the conveyance of the land or interests in the land commencing with severance from the sovereign and proceeding by conveyance, devise or descent from the original patentee or grantee.

Your trainee should also have a basic understanding of how the upstream oil and gas business works, beginning with the negotiation of an oil and gas lease through the sales of the oil and gas products to the pipeline and beyond as well as the unique vocabulary of the industry. An understanding of the oil and gas industry is something more experienced attorneys often take for granted.

In addition, you should encourage your trainee in the strongest possible way to ask questions and to never be embarrassed to do so.

1. Understanding Matters Affecting Title:

The first thing you should teach your trainee is to read the words on the page without making assumptions as to what the parties intended or what the parties thought the document was to accomplish. As it is the intention as expressed by the words of the deed that is given effect regardless of the intention of the parties that they failed to express.

You should teach the trainee the effect on title of different types of instruments, including deeds, deeds of trust, easements, leases, assignments, liens, probate proceedings, affidavits and judgments. The nuances of deeds and other instruments, including proper identification of the parties, the granting clause, property descriptions, reservations, the warranty clause, the habendum clause, and acknowledgments should be explained as to the effect of each individually and in relation to each other.

You should teach your trainee how to determine whether a description is valid. In addition, you should

show your trainee how to plat out a metes and bounds description; supply them with a compass and an Allen scale for this task. Since some land is conveyed by reference to the lots and blocks in a subdivision you should familiarize them with the plat/map records in the county. If the trainee does not understand descriptions by township and range or State Plane Coordinate system you should explain those.

In addition you should explain reservations of nonparticipating royalty, executive rights and full or undivided mineral interest, whether perpetual or term, as well as reservations of a life estate or other future estate. You should also explain to your trainee how to determine whether an acknowledgment is defective and its effect on notice.

The trainee should develop a comprehensive understanding of the recording statutes and understand what constitutes "notice". In addition, he or she should have knowledge of the types instruments that must be recorded, the instruments that may be recorded, and the requirements for recording an instrument.

The trainee must also know that there are matters not evidenced by instruments, whether recorded or unrecorded that affect title, including but not limited to homestead rights, parties in possession, and state tax liens.

You should explain to the trainee that he or she might have to opine upon the effect of unrecorded instruments, including letter agreements, operating agreements and other instruments particular to the oil and gas industry. A show and tell approach is a good teaching method.

2. Researching Title:

The next step is to teach your trainee the basic and most rudimentary skill of a landman; running title from the indices. Take your trainee to a county clerk's office that maintains both bound indices and computer indices. You should explain that traditionally an instrument is filed by bringing it to the clerk's office and paying the filing fee. Once filed it is entered into a daily register and then recorded into a volume in the appropriate records maintained by the clerk. Some county clerk's offices now provide for computerized filing of instruments, as well as electronic filing of instruments generated by a title company at closing.

Historically the instrument was copied by hand into a volume of the appropriate records. As technology advanced documents were scanned either by a service or later with equipment set up in the clerk's office. Once scanning became common it could be several weeks between filing and the time the document appeared in a volume.

The traditional clerk's records were the Deed Records, the Deed of Trust Records, the Mechanic's and Materialman's Lien Records, State Tax Lien Records, Federal Tax Lien Records, Lis Pendens

Records and Probate Records. Since the mid-1990's, the various records maintained by the county clerks have been consolidated into one set of volumes called the Real Property Records, Official Public Records or Official Records.

After (or contemporaneous with) recording, the document was indexed into the direct (grantor to grantee) or reverse (grantee to grantor) indices by entering the volume and page on which it would appear, together with the names of the parties, the date of filing and recording and a brief description of the property involved. Since the advent of computerized filing, the recording and indexing occurs nearly simultaneously, making the filed instrument almost immediately available for viewing by the public.

Though most clerks' offices now use a computer system for filing and recording that system is not necessarily an improvement over the hand entry system. Depending on the county, the computerized filing system may only go back to the 1990's. Even though there has been improvement to the filing and recording software, if the clerk made even a small error in entering the grantor or grantee name then the instrument may not be locatable.

No method of filing, recording or indexing is failsafe and many filed instruments have been lost before recording, recorded in the wrong set of records (for instance a deed recorded in the deed of trust records) or incorrectly indexed.

You should explain that although logic dictates that conveyances from/to parties would be indexed under the party's last name, logic does not always prevail at the clerk's office. The trainee should be told to check other places like "P" for Public for reverse on affidavits (the direct indexing is often done under the affiants name which is not much more helpful) and "X" for any instrument the clerk didn't know where else to enter. Also explain that the index should include a notation for each entry describing the land; however, it is not unusual to see "100 acres, etc." for conveyances covering multiple tracts. That abbreviation can result in the necessity of looking at numerous instruments to find the one covering the land under search.

3. Creating Flowcharts:

The next step is to show your trainee how to create a system to follow the chain and see the evolution of title. This is a skill that will be used by your trainee as an examiner whether conducting a standup examination (where the instruments are compiled and/or examined in the clerk's office) or a sit down examination (where copies of the instruments are examined in the office). Most landmen and some examiners will use a chronological list of instruments set out either by execution or filing dates; others will use a diagram or flow chart. The latter is the best method to track documents and detect any gaps in title.

With either method the chain of title should commence with the severance from the sovereign and continue from one grantor/grantee, assignor/assignee, testator/devisee, etc. to the current date.

The preparation of flowcharts is discussed further in Section II.B.7 in this paper below in connection with the manner of examining the title instruments.

4. Running Title:

Next have your trainee run title on a tract of land, keep it simple since this will not be the examiner's job (absent a stand-up examination). You should provide a plat depicting a tract in a relatively small survey and have them start with the reverse indices searching for the patentee or original grantee, then run the title forward in the direct indices to a current date, then run each name back in the reverse indices. Seldom will such a "bare-bones" search be necessary; the examiner will usually be provided with a document (usually an oil and gas lease) providing recording information for a source deed where the description of the land can be confirmed. With the source deed reference title can be developed by running the name of the grantor in the source deed in the reverse indices "backward" to the original grantee or patentee. Then each owner's name should be run "forward" in the direct indices, as well as any other indices (deed of trust, etc.) maintained by the clerk's office to the current date. The close of the search should be noted by the date and time of the last instrument recorded in the indices, for instance March 25, 2015 at 4:30 P.M.

Advise the trainee that Texas is a forward search jurisdiction and that any conveyance by an owner, even subsequent to his or her conveyance of the land, provides constructive notice and could reveal a senior purchaser. Also remind your trainee that if a tract of land lies in more than one county, that filing in either county provides constructive notice and the records of both counties must be researched.

Now take your trainee to an abstract plant. Not all offices allow the public to view their records, but if they do it is a good resource. Show your candidate the tract files and especially the miscellaneous or general files. The latter may be the only reasonable way to find affidavits (remember those entries under "P" for Public and the affiants name at the clerk's office?) This may also enable your trainee to see the instruments he or she missed at the clerk's office.

Teaching your trainee how to run title may seem unnecessary, but as an examiner he or she will need to understand the process by which title is researched in order to best evaluate the materials being examined, which is the next step in training the examiner.

5. Evaluating Title Materials:

Before embarking on the examination you should teach the trainee to evaluate the materials upon which

the opinion will be based. Where the examiner is not conducting a standup examination, he or she must rely upon a certified abstract, a title search prepared by an abstract plant or a runsheet prepared by a landman. Although certified abstracts are the gold standard for a title examination, they are seldom now available. A title search is a list of instruments affecting the land under search and will generally not be certified and may cover only a limited period of time. A landman's runsheet is also not certified and may contain many restrictions on the search. Although the runsheet may cover title from the sovereign, it may contain other restrictions or omissions; for instance, it may exclude deeds of trust filed more than the last thirty years prior or not include any leasehold assignments for leases beyond the primary term. The abstract of title, title search or landman's runsheet should clearly state the beginning date and time, and the closing date and time of the document.

The examiner will of course need copies of the instruments listed in the title search or on the runsheet. If the examiner is not examining the instruments as recorded in the clerk's office, he or she will need an actual copy. Although a certified copy is not necessarily required, it is important that the document be an exact copy of the instrument as it appears in the clerk's office. Copies can be acquired electronically from many counties through a service, but they may not accurately reflect the instrument as filed with the clerk. In addition, the examiner must verify that he or she has received the entire document, including the file stamp and recording information set out at the end of the instrument. Where an instrument contains many exhibit pages it is not uncommon for only the pages affecting the interest under search being submitted. The examiner should not rely on a partial instrument, as restrictions or reservations (particularly in leasehold assignments) might be contained on an omitted portion of the exhibit. Unless copies of the documents are ordered directly from the clerk, it is important to determine the source of the copies and the reliability and experience of the person providing them.

In certain instances a client may direct the examiner to rely upon either partial copies or unrecorded copies and in such case the examiner must clarify the limitations in the opinion.

6. Commencing the Examination:

Before teaching your trainee how to examine title you should direct him or her to read and develop a comprehensive understanding of the Texas Title Standards found in the Title 2 Appendix of the Texas Property Code. The standards address many common issues arising in a title examination and are an invaluable aid to both new and experienced title examiners. There are also many excellent scholarly articles addressing specific issues encountered in title

examination that will benefit your trainee as his or her title examination skills mature; however at this point in training your trainee will most benefit from your personal guidance and close supervision. By creating title examination "situations" you can develop the trainee's knowledge and continue to customize training from what you learn about his or her ability.

The examiner should commence any examination with the instrument severing the land from the sovereign, which is evidenced by a grant or a patent. Often the copy of the grant (from the government of Spain or Mexico) recorded in the clerk's office will be in Spanish; however translations are available from the General Land Office (and are often also filed) with the county clerk of the county where the land is located. Although not necessary for a grant to be valid, in some cases patents were obtained, in effect confirming the title.

For severances from the Republic of Texas or the State of Texas, the examiner generally relies on the patent. The issuance of a patent is a mere administrative act; the severance from the sovereign occurs when the land is surveyed for the applicant and the field notes filed with the General Land Office. Where the copy of the patent filed with the clerk appears to contain errors, the examiner should obtain a copy from the archives of the General Land Office. If no patent has been issued the examiner should obtain a statement of fact pertaining to the survey from the General Land Office.

During certain periods and dependent upon the classification of the land and the law under various sales acts the State retained either the minerals or a free royalty interest. This information is generally not contained in the patent. For lands granted after September 1, 1895 (when the Revised Statutes of 1895 went into effect) when the State released all rights to minerals in lands granted prior to that date, the examiner should obtain a classification letter from the General Land Office.

7. Examination of Instruments

At this point the trainee puts to use all of the training and skills he or she have learned up to this point. Again there is no required method to progress through the instruments provided for examination, as long as the methodology is thorough. The selected method may depend on the number of documents to be examined; or the complexity of the lands involved, both as the number of acres in the tract and the number of internal tracts within the lands under examination. Other factors to consider are the sheer volume of instruments and the perceived number of parties potentially to be encountered, and the division of the surface and mineral estates, including nonparticipating royalty owners, and the number of leasehold or working interest owners.

Traditionally attorneys examining title 35 years ago would examine instruments in the order presented in the abstract, and prepare a flowchart by hand for each instrument. The flowchart would be prepared on a large sheet of paper (butcher paper) on which each document or transaction in the abstract was identified with the names of the grantors and grantees, the abstract page where the instrument was located, the date of the instrument, its nature, when filed of record, the book, page and type of record where recorded, and a brief reference as to what the instrument purports to convey. If title objections or comments were made, the notations would be shown by red pencil or red pen next to the particular document.¹

In addition, they would plat or attach a copy of the land as platted from the descriptions involved in the chain of title to the land under examination. The examiner should not rely on plats that are not of the public record or are not drafted by the title examiner.

Fast forward 35 years to the information and technology age. Most young attorneys are more comfortable and proficient with their laptops than they are with pen and paper. Flowcharts prepared in a spreadsheet software are more second nature and faster for them to prepare than by hand. The spreadsheet format for flowcharts allows for more detail, coloration and a more expansive flowchart. In addition, the spreadsheet format can be utilized for creating and tracking the division of interest on an "as-you-go" basis, and the spreadsheet will help with the young attorney who does not have highly developed math skills.

Additional software that inputs metes and bounds descriptions and creates a plat from the input are readily available for use in platting the property descriptions and are relatively easy to use. Technology is a tool, but it is not a substitute for the underlying skills of understanding and mastery of preparing a flowchart and platting land descriptions by hand. Technology can be a crutch to developing the skills a new title attorney needs to develop to be accurate and precise. Mistakes in the digital formats are often more difficult to identify than in the more rudimentary paper approach. Despite popular belief, software applications are not infallible, and as the saying goes, "bad data in, bad data out."

III. PREPARING THE OPINION:

The preparation of the title opinion depends in part on the type of opinion the client has requested, and the client specific limitations on the opinion, but the examiner should not lose sight of the fact that the attorney is delivering a legal opinion. In this respect, Standard 1.10. Purpose of Title Examination, Texas Title Examination Standards, should be reviewed often by the attorney-trainee.

Most firms, if not all, have a template form of title opinion. Some firms have an extensive form manual of comments and requirements relating to different title issues and subjects that may be encountered in title examination. Admittedly, these forms create uniformity in style and substance of form for firms, and expedite the process of drafting the title opinion. Experience has shown that a trainee will attempt to apply templates and forms in the books to every fact situation involving the subject of the form comment and requirement, when, in reality, this type of application is fraught with error. This is the primary obstacle to be overcome by the trainee in the use of a template form title opinion or a drafting guide of forms related to specific title issues.

Some aspects of training the title attorney, both in the examination of instruments and the drafting of the title opinion, that are extremely important are (1) the ability of the trainee to recognize the irregularities, title defects and encumbrances affecting marketable title, (2) the relative importance of the irregularities, title defects and encumbrances to the type of opinion being prepared, and (3) the proper method of curing the irregularities, title defects, and encumbrances to establish marketable title. The understanding of these points is where the comments and advice previously set forth in this paper come together in the process of training a title examiner. A good deal of common sense is also very helpful at this stage of the process.

After review of the documents and the creation of the flow chart, discuss with the trainee how to prepare the title opinion per the client's requirements. The purpose of a title opinion is to not only identify ownership of the interests and lands being examined, but also to furnish proof of marketable title for the client. Explain to the trainee what marketable title is and how a title opinion is written to achieve marketable title.

In addition, you should explain components of the title opinion. Explain to the trainee how to organize the information and set-up a title opinion. An opinion should be set-up so the client can easily read and follow it as well as determine ownership and any objections, title curative requirements and related issues quickly. Each title objection should clearly identify the title objections, problems, gaps in information or instruments, the quantum of mineral and/or royalty affected by each title objection and the individuals or entities affected. In busy times, clients may not always be able to read all of the opinion so it is important for the examiner to put the threshold issues affecting the title to the lands first. The trainee should learn how to organize the objections by threshold issues and their order in the title opinion.

IV. REVIEWING THE OPINION:

The review process is a critical time for the trainee and the trainee's supervisor tasked with training. This is the time the trainee not only learns, but he or she is also building confidence in their ability and building a rapport with his or her supervisor.

A. Initial Review

Once the trainee understands the basic construction of the opinion, it is time for the trainee to review his or her notes, flowchart, the title, and then prepare the opinion. It is important for the trainee to understand he or she is not alone in the process and may have questions. It is important for the supervisor to understand this and be willing and available to answer questions the trainee may have.

The initial review process commences when the trainee brings the supervisor what he or she believe is a completed title opinion. The trainee should also bring the file, including the runsheet, plat, flowchart, and any documents found that he or she believes need to be discussed (i.e. nonparticipating royalty deeds, reservations of minerals, etc.). The initial review process should be very detailed for the first several projects or more. Remember the trainee is learning and building a rapport with his or her supervisor too.

The first step in the review process is for the supervisor to ask questions. For example, the supervisor could ask, "Tell me about the chain of title?" or "Where is this land located?" or "Are there any rivers or streams?" or "Were there any nonparticipating interests?" This allows the trainee to get comfortable and begin telling the supervisor about what he or she has learned about the title, about any gaps or issues that may be outstanding, etc., and also allows the supervisor to evaluate how well the trainee knows the chain of title.

Next, the supervisor should review the trainee's flow chart and the plat or plats; this will allow the supervisor to begin understanding the chain of title and understand the trainee's knowledge of the materials examined. As the supervisor is going through the flowchart, he or she should ask questions about certain documents in the chain of title. The supervisor may ask "Did this document reserve any interest?" or "Did this document just convey the subject lands?" The supervisor should also ask the examiner for the Source Deed or Deeds (the deed from which the subject lands are derived). Here, the supervisor can ensure the trainee properly prepared the metes and bounds for the Subject Lands. Title examiners must become knowledgeable with running metes and bounds and platting-out lands by methods other than using deed plotting software. They must also know, understand and employ the legal principles applied when using metes and bounds descriptions, including priority of calls. It is important for the supervisor to fully explain

this task to the trainee and evaluate the trainee's performance.

As the supervisor is following the flow-chart, he or she may also review the runsheet while reading all of the core instruments, simultaneously. This method ensures the trainee did not miss any relevant documents or portions thereof and ensures the supervisor reviews all documents that he or she needs to review.

B. Editing the Opinion

After going through the flow chart with the trainee, the supervisor can begin to review and make edits to the opinion. He or she should start with the property description ensuring it is properly reported, will "plat-out" correctly and that all reference deeds or instruments are accurately reported therein.

In the ownership section, the supervisor should review all owner names and their spellings, notate separate property ownership where applicable, and review the ownership formulas, decimals and related calculations to ensure the accuracy. (i.e., Does the division of interest add up to 100%?). In the review process, the supervisor can continue to ask questions to the trainee to ensure understanding why interests were tabulated and/or calculated a certain way. This will allow the supervisor to ensure the trainee understands proportionate reduction, non-apportionment, and the difference between a fixed royalty versus a fraction of the royalty, if applicable.

After reviewing the ownership section, the supervisor can move to the tabulations of leases, assignments, nonparticipating or nonexecutive interests, encumbrances, liens, deeds of trusts and easements. The supervisor should ask to see each tabulated item to compare the information tabulated by the trainee. This is also a good time to ask the trainee to point out certain clauses in a lease, assignment, or other tabulated instrument. The supervisor may ask the trainee to identify the Pugh clause, proportionate reduction clause, or depth or horizontal severance provisions in leases, for examples. These questions not only allow the supervisor to determine the knowledge of the trainee, but can also give the trainee confidence in his or her ability and help them learn.

Now, the supervisor can move forward in the opinion to the comments and requirements. The supervisor should read each comment and requirement and ask questions as he or she goes through the opinion. Again, these questions are at first, to allow the supervisor to understand the knowledge of the trainee, but also to build rapport and prepare the trainee for speaking with supervisors and with clients in the future. The supervisor may ask the trainee to explain his or her reasoning for putting in a particular comment or requirement in the opinion, why they placed a certain requirement prior to, or after, other

requirements, or if there are any alternatives to cure the issue other than the one provided. This ensures the trainee's selected title curative requirements are reasonable and necessary and based upon plausible conclusions and/or assumptions.

C. After the Initial Edits

After the supervisor has made the first set of edits to the opinion and it is ready for second review, the trainee should review all edits the supervisor made so he or she fully understands the changes made and the reasons for them.

This is a good time for the supervisor to ask the trainee hypothetical scenarios relevant to the opinion just reviewed as another teaching moment where the supervisor can evaluate the trainee's knowledge for thinking through issues and solving title defects. Often, clients will ask hypotheticals to the examiner and the examiner must be able to think quickly and thoroughly on their feet. Sometimes the trainee's best answer may be "I do not know, but I will find out". The trainee should understand this is an acceptable answer, on occasion. If this is the answer, have the trainee research the answer and get back with the supervisor by the end of the day. Express to them the reasoning behind this step is to learn how to timely find answers to issues and be ready to talk to clients in the future.

Now that the initial edits are made to the opinion, this is a good time for the supervisor to express to the trainee his or her reasoning for asking actual and hypothetical questions. The supervisor should explain how the review process is an opportunity for the trainee to really learn, build confidence and build a rapport with the supervisor. Again, inexperienced and less experienced title examiners may be apprehensive in asking questions. This review method allows the trainee and supervisor to talk through title objections and issues together with the proffered solutions (title curative required) at different points through the process establishing rapport and an environment where the trainee is not apprehensive and can discuss his or her concerns, knowledge and related issues more freely with the supervisor.

D. Final Review

At this point the opinion has been reviewed by the supervisor, all rounds of edits should be made and reviewed by the trainee, and it is time to finalize the opinion. The supervisor should review all aspects of the opinion carefully to ensure no additional edits are needed – or that they are made. This is also the time for the supervisor to explain the finalizing process to the trainee, to recap the project, the processes employed in preparing the opinion, as well as the opinion itself to ensure it communicates effectively and completely to the client in the most efficiently understood manner as is possible. Also, the supervisor

should be explaining how the client's Landman or in-house Attorney will read and use the opinion helping the trainee to understand the ultimate goal the opinion is designed to achieve.

Finally, have the trainee help prepare the email, transmittal letter and ready the opinion for signing. This will allow the trainee to learn the process of sending the opinion and how each client wants to receive them.

V. WHY THE REVIEW PROCESS IS IMPORTANT:

When hiring title examiners with the thought that this may be a career for the trainee, take time to thoroughly and effectively train him or her. Teaching them the entire process and the concepts, goals and consideration for the process will, hopefully, create a more effective, independent associate possessing the ability to start and complete projects efficiently and timely, and who can also communicate effectively with you and your client, both in writing and verbally.

This method of review is a process that builds for the future. You can use this review process to help the trainee learn issues that he or she may not have thought of. Or think back to the first time you were on the phone with a client being asked question after question about title, or oil and gas law, or both. Were you fully prepared? Would you have liked someone to have prepared you for questions right from the start? This proposed method of reviewing is designed for such an event and for future attorney-client exchanges. This process helps the title attorney being trained, it also makes the supervisor a more-effective attorney and, ultimately, ensures the law firm of having title examiners experienced and capable to handle clients' needs.

VI. CONCLUSION

The hiring and training of a new attorney as a title examiner is an exciting time for the new attorney and the experienced attorney. The process set forth in this paper is very time consuming in the beginning for the training attorney, but the reality is that the process will take a long period of time for the new attorney to reach a level of competence that will be satisfactory for the training attorney. But the end results are very gratifying for both attorneys. While the approach followed by a training attorney varies based on style and experience, the guidelines offered in this paper combine the traditional and current practices utilized by experienced examiners in training the new title examiner.

ⁱ Section 316, *Id. Texas Practice: Land Titles and Title Examination*.

