“What Can Your Paralegal Do In Your Law Practice?”

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A. Why you should consider a Paralegal for your law practice

Paralegals help the lawyer increase the amount of work that can be done for clients by performing tasks that the lawyer would otherwise spend his or her time doing. Work such as:

1) initial drafts of documents
2) assisting the attorney with initial interviews and meetings with clients
3) preparing the interview memoranda and task list for the case
4) monitoring deadlines
5) investigating facts to develop the case
6) communicating with the client to keep the client happy with their lawyer, and
7) contributing to law practice efficiencies and organization.

B. What is a Paralegal?

In 2005, the State Bar of Texas Board of Directors, and the Paralegal Division of the State Bar of Texas, adopted a new definition for "Paralegal" in Texas:

A paralegal is a person, qualified through various combinations of education, training, or work experience, who is employed or engaged by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of a licensed attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal principles and procedures that, absent such a person, an attorney would be required to perform the task.

The instructive portion of this definition is that but for the paralegal, the attorney would perform the task. Just as nurses assist doctors in providing medical care, paralegals assist attorneys in legal services.
Importantly, the paralegal must possess the requisite legal knowledge to perform substantive legal work, but do so under the supervision of a licensed attorney.

Paralegals are not licensed as nurses are licensed in the medical field. Similar to the medical profession, however, where there are many different types of nurses with varying degrees of expertise, paralegals assist attorneys in many different areas of practices or environments at different levels.

C. History – Beginning of the Profession

In the 1960’s and 1970’s the business axioms of separation of tasks and delegation of work to the most cost-effective employees began to be applied to legal services. At the same time firms began to integrate and apply business principles to legal services, they were also experiencing economics-driven pressures from clients to control legal costs. While legal secretaries, law clerks, librarians and investigators had been utilized by the legal profession, a new profession began to emerge that would assist lawyers in a specialized role, and one that could be charged to clients, but at a reduced rate than that of attorneys. In the early years, these individuals were called “Legal Assistants.” While some retain this title, today, the prominent terminology is now “Paralegal.”

D. History in Texas

Like the ABA established in 1971, the State Bar of Texas created a Legal Assistant Committee (now known as the “Paralegal Committee”) in 1977 (a Special Committee which became a Standing Committee in 1981).

http://www.texasbar.com/Template.cfm?Section=Committees_List1&Template=/ContentManagement/ContentDisplay.cfm&ContentID=12127

In 1981, the State Bar of Texas created a Division of the Bar, the first of its kind in the United States, now known as the Paralegal Division of the State Bar of Texas. www.txpd.org The Division is a voluntary paralegal organization (unlike Texas attorneys and the integrated, or mandatory Bar – State Bar of Texas). Currently, the Division has over 1,500 members.

In 1994, The Texas Board of Legal Specialization began specialty exams for paralegals, just as they promote for attorneys in Texas. This was also a “first” in the United States for a state attorney specialization program (under the auspices of a state Supreme Court) to also test and certify paralegals.

E. How does a person become a Paralegal?

On April 21, 2006, the State Bar of Texas Board of Directors approved amending the definition by including standards for paralegals. The standards “are intended to assist the public in obtaining quality legal services, assist attorneys in their utilization of paralegals, and assist judges in determining whether paralegal work is a reimbursable cost when granting attorney fees.” These standards as to who is
properly called a paralegal, include levels of education, certification, and experience, *See Appendix A or website*:


Most paralegals have legal education designed for paralegals, many from an American Bar Association approved program. There are over 40 paralegal educational programs in Texas. The American Association for Paralegal Education (http://www.aafpe.org/) has information about many programs all over the U.S.

Firms and corporations have different educational criteria for hiring paralegals, and many require a four year degree plus paralegal education (or a four year degree that embodied paralegal courses). There are also two-year Associate degree programs, and several were among the first paralegal courses established in Texas (or the United States).

F. What are the differing roles of a Paralegal and an Administrative Assistant or Legal Secretary?

By definition, a paralegal performs substantive legal work, under the supervision of an attorney, that absent the paralegal, the attorney would perform the legal work, and has education, training, or work experience that enables the paralegal to perform such substantive legal work. An administrative assistant or legal secretary performs clerical and administrative work, also under the supervision of the attorney.

Do you need both a paralegal and an administrative assistant? The answer to this question is dependent upon your type of practice, the amount of legal work and number of clients you have, and the type of cases you handle.

For most attorneys, even solo and small firms, it is necessary to have an administrative assistant who handles incoming calls, greeting of clients, file opening, billing, and general clerical work. Combining this position with the paralegal position may diminish the “return” you would otherwise obtain from having both a paralegal and an administrative assistant/secretary.

Family law, wills/probate/estate, personal injury, etc. are practice areas that are very well suited for paralegals to assist the attorney and draft most of the documents in these cases. Having a paralegal concentrate his or her time for billable work increases your profitability and efficiency.

What is the “tipping point” in your practice for needing a paralegal? This also depends upon the attorney and the amount of time the attorney is working, the number of cases being handled and projected time-frames of those cases. Many solo or small firm attorneys seek freelance or contract paralegals so that they can be used on an as-needed basis.

G. Work Performed by a Paralegal under the supervision of a lawyer

Under the direction and supervision of a licensed attorney, a paralegal can do anything an attorney may legally and ethically do, *except*:

1) A paralegal may not give legal advice independent of the attorney
2) A paralegal may not represent a client in court or other tribunal unless otherwise legally authorized (such as federal social security cases, or some states agencies)

3) May not engage or accept a client, set or quote a fee (independent of the lawyer’s instructions)

The Standards adopted by the State Bar, at (2) state: “A paralegal is prohibited from engaging in the practice of law, providing legal advice, signing of pleadings, negotiating settlement agreements, soliciting legal business on behalf of an attorney, setting a legal fee, accepting a case, or advertising or contracting with members of the general public for the performance of legal functions.”

The Paralegal Division, with Thomson West, published a book, Paralegal Ethics Handbook, which includes a number of ethical considerations for paralegals in various types of practices. See: http://txpd.org/page.asp?p=Ethics%20Handbook%20Flyer

H. Paralegal Fees and Recovery of Fees in Attorney Awards

In practices that bill for legal services on an hourly basis, paralegals are also billed per hour. Just as attorney rates vary greatly among types of firm, practice area, and geographic location, the same is true for paralegal rates. The 2009 Paralegal Today magazine Annual Survey showed that 12.1% of paralegals who responded to the survey are billed over $156+ per hour. Unless a paralegal is a senior paralegal with extensive experience, paralegals are generally billed near or below beginning associate rates. Some clients, particularly in the insurance industry, specify what tasks should be done by paralegals and they will only pay for paralegals to perform those tasks.

The first Texas appellate opinion on the recovery of fees for legal work performed by paralegals [then called “legal assistants”] that could be recovered as part of an attorney fee award set forth the evidentiary tests for fee recovery:

(1) that the legal assistant is qualified through education, training or work experience to perform substantive legal work;

(2) that substantive legal work was performed under the direction and supervision of an attorney;

(3) the nature of the legal work which was performed;

(4) the hourly rate being charged for the legal assistant [paralegal]; and

(5) the number of hours expended by the legal assistant [paralegal].”


This opinion demonstrated the distinctions applicable to paralegal work and helped to further define the profession.

I. Finding the Right Paralegal for Your Practice
Perform a needs analysis for your practice.

1. How many open legal matters
2. What type of cases
3. Projected “life” of the cases
4. Projected fees expected from the cases

What to look for in a paralegal to fit your practice

1. Education, training or work experience
2. Referrals from other attorneys or paralegals
3. Contract or freelance paralegals
4. Interpersonal interaction – is it a good fit?
5. Knowledge of the area of practice
6. Understanding of the geographic area and community

J. Where to Find a Paralegal

Paralegal Division – State Bar of Texas Job Bank

Local Paralegal Association Job Banks

“Word-of-Mouth”

From paralegals/other attorneys

Paralegal schools

K. Compensation/Salaries

Paralegal compensation is determined by your locale and the salaries in your area and type of practice. Inquire from colleagues about the ranges being paid to paralegals, and to attorneys and administrative personnel in your area. Just as salaries are usually higher for attorneys in large firms and metropolitan areas than in small firms or smaller cities and towns, the same is true for paralegal positions.

Consider creative solutions to the cost of compensation. Perhaps hire a part-time employee or offer flexible hours. You may be able to mediate compensation by offering other benefits that do not cost you money.

L. Profitability

Paralegals not only help provide cost-effective legal services to clients, they are a profit-generating source for the firm (or within a corporate setting, a lower cost of legal services to the company). Profitability models for paralegals compare associate to paralegal salaries/benefits and overhead costs and billing rates. A profitability component that is more difficult to measure is the effects of leveraging – how much
more billable work does the attorney accomplish by utilizing paralegals for other tasks (whether billable or non-billable) that the attorney would otherwise do? Paralegals continue to gain skill and expertise, just as lawyers, however, they never become partners as associates nor do paralegal compensation rungs increase at the rate of associates.

Some paralegals “freelance” and do work for attorneys in lieu of being an employee of the attorney or the firm. Some may even perform much of their work “virtually.” These arrangements can benefit lawyers who do not need a full time paralegal or the overhead associated with an employee.

M. Rules of Professional Conduct

Rule 5.03 of the Rules of Professional Conduct relates to “Responsibilities Regarding Non-Lawyer Assistants” states that “a lawyer having direct supervisory authority over a non-lawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer. The commentary notes to the rule state that “Such assistants act for the lawyer in rendition of the lawyer’s professional services.”

Lawyers may not direct paralegals to do anything they may not do, and, they must appropriately supervise the legal work performed by the paralegal under the direction of the attorney.

N. Avoiding Conflicts and Disqualification

When hiring a paralegal (or any lawyer or non-lawyer for that matter), care must be taken in ensuring there are no conflicts with work done for an opposing party, although the standards for non-lawyers are different than for lawyers. Until 1994, the Texas Supreme Court had not addressed standards with regard to disqualification based upon hiring a non-lawyer. In Phoenix Founders, Inc. v. Marshall, 887 S.W.2d 831, 834-35 (Tex. 1994) the court articulated two presumptions for non-lawyers:

1) There is a conclusive presumption that the paralegal obtained confidential information during his/her work on the case at the first firm. (which is the same for attorneys)

2) There is a rebuttable presumption that the paralegal shared confidential information about the case with those in the new firm. (different than for attorneys) This presumption may be rebutted by showing there have been adequate steps taken to prevent disclosure of confidences, such as cautioning the paralegal not to disclose any information relating to the former firm client, instructing the paralegal not to work on any case on which the paralegal worked for a former firm. Unless there is client consent, the firm should take measures to make sure a paralegal does no work in connection with matters on which the paralegal previously worked.

O. Team Relationship

To increase efficiency, effectiveness and productivity (which translates to profitability), the legal environment should emphasize the team relationship. When the senior partner, associate, first year lawyer, paralegal, secretary, etc. all work together as a team this can be successfully accomplished. In
small firm environments, this team may be comprised of the sole practitioner, paralegal and secretary. In small practices, everyone must do everything.

Key to the team relationship is communication. Today’s technology provides the ability to communicate more than ever before. Keeping the team informed prevents wasted time, assists in work flow and organization, and helps prevent missed deadlines. Each member of the team has an important function. Many paralegals today have technological expertise for document management, trial or other presentation programs, Power Point, document preparation programs which are assets to their attorneys.

The attorney is like the quarterback who calls the plays - - but he or she must meet his team in the huddle and communicate with them ! The ultimate winner in the team relationship is the client, who has the benefit of a team representing their interests.

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After 35 years, paralegals have solidified and continued to progress a distinct profession within legal services. What can Paralegals do? Paralegals can do much to advance your practice of law !
APPENDIX A
From: www.txpd.org

In 2005, the State Bar of Texas Board of Directors, and the Paralegal Division of the State Bar of Texas, adopted a new definition for “Paralegal.”

A paralegal is a person, qualified through various combinations of education, training, or work experience, who is employed or engaged by a lawyer, law office, governmental agency, or other entity in a capacity or function which involves the performance, under the ultimate direction and supervision of a licensed attorney, of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal principles and procedures that, absent such a person, an attorney would be required to perform the task.

On April 21, 2006, the State Bar of Texas Board of Directors approved amending this definition by including the following “STANDARDS,” which are intended to assist the public in obtaining quality legal services, assist attorneys in their utilization of paralegals, and assist judges in determining whether paralegal work is a reimbursable cost when granting attorney fees:

A. Support for Education, Training, and Work Experience:

1. Attorneys are encouraged to promote:
   a. paralegal attendance at continuing legal education programs;
   b. paralegal board certification through the Texas Board of Legal Specialization (TBLS);
   c. certification through a national paralegal organization such as the National Association of Legal Assistants (NALA) or the National Federation of Paralegal Associations (NFPA); and
   d. membership in the Paralegal Division of the State Bar and/or local paralegal organizations.

2. In hiring paralegals and determining whether they possess the requisite education, attorneys are encouraged to consider the following:
   a. A specialty certification conferred by TBLS; or
   b. A CLA/CP certification conferred by NALA.; or
   c. A PACE certification conferred by NFPA; or
   d. A bachelor’s or higher degree in any field together with a minimum of one (1) year of employment experience performing substantive legal work under the direct supervision of a duly licensed attorney AND completion of 15 hours of Continuing Legal Education within that year; or
   e. A certificate of completion from an ABA-approved program of education and training for paralegals; or
   f. A certificate of completion from a paralegal program administered by any college or university accredited or approved by the Texas Higher Education Coordinating Board or its equivalent in another state.

3. Although it is desirable that an employer hire a paralegal who has received legal instruction from a formal education program, the State Bar recognizes that some paralegals are nevertheless qualified if they received their training through previous
work experience. In the event an applicant does not meet the educational criteria, it is suggested that only those applicants who have obtained a minimum of four (4) years previous work experience in performing substantive legal work, as that term is defined below, be considered a paralegal.

B. Delegation of Substantive Legal Work:

"Substantive legal work" includes, but is not limited to, the following: conducting client interviews and maintaining general contact with the client; locating and interviewing witnesses; conducting investigations and statistical and documentary research; drafting documents, correspondence, and pleadings; summarizing depositions, interrogatories, and testimony; and attending executions of wills, real estate closings, depositions, court or administrative hearings, and trials with an attorney.

"Substantive legal work" does not include clerical or administrative work. Accordingly, a court may refuse to provide recovery of paralegal time for such non-substantive work. Gill Sav. Ass'n v. Int'l Supply Co., Inc., 759 S.W.2d 697, 705 (Tex. App. Dallas 1988, writ denied).

C. Consideration of Ethical Obligations (See Note* below):

1. Attorney. The employing attorney has the responsibility for ensuring that the conduct of the paralegal performing the services is compatible with the professional obligations of the attorney. It also remains the obligation of the employing or supervising attorney to fully inform a client as to whether a paralegal will work on the legal matter, what the paralegal’s fee will be, and whether the client will be billed for any non-substantive work performed by the paralegal.

2. Paralegal. A paralegal is prohibited from engaging in the practice of law, providing legal advice, signing pleadings, negotiating settlement agreements, soliciting legal business on behalf of an attorney, setting a legal fee, accepting a case, or advertising or contracting with members of the general public for the performance of legal functions.

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*Note: a more expansive list is included in the "General Guidelines for the Utilization of the Services of Legal Assistants by Attorneys" approved by the Board of Directors of the State Bar of Texas, May, 1993.

These standards may be found at www.txpd.org and at www.texasbar.com/paralegalstandards.