

## HOW TO EFFECTIVELY UTILIZE YOUR PARALEGALS

As a Paralegal, I realize some view me as an alien species. I look kind of funny and seem friendly and competent but people aren't real sure about what to do with me. Who am I? My daughter used to refer to me as a "sort of lawyer". An opposing party in a lawsuit once referred to me as "just a Paralegal" like I couldn't quite cut it so settled for the "para" caveat in my job title. The first question I was asked when I interviewed for my first "real" Paralegal job was "why aren't you an attorney?" I like to use the line I do all the work but get none of the credit. The truth is the definition of "Paralegal" is so broad, it is indeed difficult for lawyers, law firms and legal departments to know what exactly what to do with them. Sometimes Paralegals are merely status symbols. All effective, prosperous profitable law firms have them so in an effort to appear effective, prosperous and profitable in the eyes of the public and potential clients, some firms hire one or more Paralegals without having a direction on which to send them when they begin work. Some firms try to circumvent this dilemma by hiring "legal assistants" or combination administrative/legal assistants. Many times, especially in smaller firms and in lesser populated geographic areas, Paralegals are viewed as competition, ready to steal the bread off the attorneys' tables by performing their duties at lower rates. Or they are treated like glorified administrative assistants. Either way, their skills will not be put to use as effectively as they could be. Paralegals need, want and are capable of doing more than indexing medical records and depositions, taking whatever crumbs are left after the attorney scavenges for as many billable hours as they can get their hands on or simply no longer has time to deal with. Paralegals should be an integral part of the legal team and exploited for their unique skills, education and experience. Therefore, before you run your ad in the newspaper or contact your local Paralegal/legal assistant association, you should think about and determine your reasoning for wanting a Paralegal and what exactly you want the Paralegal to do for you and your organization.

To figure out how to best make use of your Paralegals and essentially get the most bang for your Paralegal buck, one needs to look no further than the Paralegal credo. As defined by the National Federation of Paralegal Associations or NFPA, **a Paralegal is a person, qualified through education, training or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer.** This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be authorized by administrative, statutory or court authority to perform this work. NFPA defines substantive as work requiring recognition, evaluation, organization, analysis, and communication of relevant facts and legal concepts. During my Paralegal education, I was taught a Paralegal could do everything an attorney could do except offer legal advice, decide which cases or clients to represent, determine fees, negotiate settlements, represent clients in court or represent clients or question deponents at depositions (which stems from the prohibition from representing clients at court). So let's break it down.

A Paralegal...

**Is a person.** That should be easy; even the slimiest ambulance chasers should realize passing off a member of some other species is not going to work.

**Is qualified through education, training or work experience.** This is what makes Paralegals unique and sets them apart from the administrative assistants and attorneys. Before you can declare “I am fine lawyer. I have Paralegal”, you have to ensure the person you are calling your Paralegal is worthy of the title. This means some degree of legal or Paralegal experience via formal education, training, prior work experience or some combination thereof. Formal training occurs in four year or two year vocational certificate programs at colleges and universities. A future Paralegal with an undergraduate degree in another field will likely get the two year certificate. To ensure you are getting a quality Paralegal, check to see if their degree program has been accredited by the American Bar Association which enforces and monitors certain standards for Paralegal education.

**Performs substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer with substantive legal work defined as requiring recognition, evaluation, organization, analysis, and communication of relevant facts and legal concepts.** The key word here is *substantive*. Generally, anything not making use of a Paralegal’s specialized knowledge and experience is not substantive legal work.

To help in deciding what **substantive legal work** is, put yourself in the shoes of an insurance company paying your fees for defending an insured in a lawsuit. If, when using the most basic fundamental definition of the task, such an insurer would likely refuse to pay for it as overhead or clerical, it is most likely not a substantive legal task. Examples include photocopying, bates numbering documents, scheduling depositions or other appointments, drafting enclosure letters and typing dictation, recorded or oral, or as means to produce an electronic copy of something on paper. Of course, emergencies happen and sometimes performance of these tasks by a Paralegal is necessary and Paralegals should be prepared to perform these tasks on occasion as a member of the entire legal team. However, Paralegals performing these types of tasks should be the exception and it should not constitute a significant portion of their job duties.

Examples of tasks Paralegals can do which would qualify as substantive are:

- ✓ Interviewing clients and witnesses.
- ✓ Drafting Petitions and Drafting – not typing – Answers.
- ✓ Drafting unique discovery requests – not stock statutory or firm sets.
- ✓ Analyzing client documents and providing recommendations regarding strategy, likelihood of victory, etc.
- ✓ Drafting status reports to clients.
- ✓ Meeting with clients to draft discovery responses – but not give legal advice on how to answer. Paralegals can identify to which requests to object, help clients interpret questions, and help direct them to where they might go for needed information.
- ✓ Drafting – not merely typing – discovery responses.

- ✓ Preparing for depositions by drafting outlines unique to the case and/or deponent as well as identifying documents or issues for the attorney to review in advance or use as exhibits in the deposition.
- ✓ Identifying and facilitating obtaining documents from outside sources such as medical records, employment records, etc. – not drafting form letters to request records.
- ✓ Providing direction, advice and supervision of administrative assistants.
- ✓ Summarizing Depositions in a manner which compares what is said in the deposition against the key facts and issues in a particular case in a cohesive and easily-understandable, easily-accessed manner that accurately reflects the deposition testimony. This can be done via the paper transcript or by taking notes during the actual deposition. Though insurance companies often will not pay for Paralegals to attend depositions, they can be valuable at depositions to take notes on the deponent's body language or on the contents of testimony when an attorney may be concentrating more on the questioning or when an insurance company demands a summary of the deposition before the transcript is generated. Although a Paralegal cannot ask questions of the deponents, they can formulate questions for the attorney to ask even during the deposition.
- ✓ Creating demonstrative exhibits for trial including charts, graphs, PowerPoint presentations and enlargements.
- ✓ Drafting scripts and outlines for examination of witnesses at trial.
- ✓ Attending trial to analyze the jury – not just transcribing names but helping to identify who they are, any biases they may have or how likely they are to see things your way. As in depositions, Paralegals can identify questions to ask and monitor body language of jurors and witnesses.
- ✓ Researching and analyzing case law and statutes regarding case issues.
- ✓ Analyzing pending motions and drafting responses.
- ✓ Identifying and working with experts to provide materials to review and procure opinions.
- ✓ Performing background checks on witnesses, opposing parties and experts as long as it involves some analysis of what is found – not just printing out a list of web search hits.

They key is to remember if your Paralegal is competent, he or she can do anything the attorney can do as long as it doesn't require providing legal advice – the attorney's forte. The other key is supervision. Paralegals must be supervised by an attorney but that doesn't necessarily mean the attorney has to review and approve every piece of work generated at every step to completing a project. As elsewhere, attorneys, law firms, legal departments and

Paralegals must find balance in supervision. The balance is likely to depend on the Paralegals' experience in general and with their particular employer or supervising attorney as well as the nature of the legal matter and the specific project. Balance needs to be fluid and evolving. However, as a general rule, the supervising attorney should review and approve anything which may impact the progression of the case and definitely anything the attorney signs or is filed with the court.

Keeping these suggestions in mind as you hire your Paralegals and develop them as an essential member of your legal team will help in ensuring positive and rewarding experiences for all involved.