

As Parrots are to Eagles, so are Lawyers to Paralegals

Andy Sommerman

Sommerman & Quesada, L.L.P.

I. Introduction

- a. This paper will discuss the working relationship of attorneys and paralegals. Specifically, discussing ethical considerations; how attorneys can effectively utilize paralegals; the duties and roles paralegals play in a lawyer-client relationship; how to form an effective lawyer-paralegal partnership; and why that partnership is important to a successful law practice.

II. Ethical Considerations

- a. Parrots: Eagles such as Lawyers: Paralegals
 - i. The analogy references the mandatory, heavily regulated attorney verses the voluntary, largely unregulated paralegal¹. Attorneys are like caged birds, such that paralegals are like free birds. Often they do very similar things, but there is a lot of contrast in what they can and cannot do.
 - ii. Attorneys are heavily regulated by a Professional Code of Conduct promulgated by courts, legislatures, or governmental agencies. If an attorney violates a rule, the consequences could result in disbarment. Paralegals are not directly subject to a professional code of conduct; however, as a member of a paralegal professional organization, a paralegal may have voluntarily agreed to follow the ethical codes of those organizations. The difference is that if a paralegal violates an ethical rule of those organizations the worse that will happen is they lose membership in that organization and/or a certification. A paralegal may also lose their job, but they can always apply for another paralegal position. It is very different for attorneys. Attorneys cannot apply for another position if they are disbarred. Attorneys have to find another profession.²
 - iii. Moreover, because paralegals lack a mandatory professional code of conduct, but yet still perform substantive legal work, attorneys are held responsible for any ethical violation committed by their employees.

¹ ABA defines paralegal as 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 person, an attorney would be required to perform the task.

² See *ABA Standing Committee on Paralegals – Lawyer’s Page* at <http://abanet.org/legalservices/paralegals/lawyers.html>.

Accordingly, the Model Rules of Professional Conduct, Rule 5.3, in pertinent part notes that lawyers are responsible for the ethical conduct of the paralegals they employ. Transgression by a paralegal may subject the lawyer to professional discipline.³

- iv. This is one reason why the relationship between a lawyer and a paralegal is so important. A paralegal's professional conduct has a direct effect on a lawyer's professional conduct. It is a symbiotic relationship. Attorneys need paralegals to help them manage cases, keep clients informed, and perform other substantive work, and paralegals need attorneys to delegate substantive legal responsibilities. To do this effectively and without reservations, lawyers must know that a paralegal is not a professional liability. It is paramount that a paralegal to be competent and ethical.

III. What Paralegals Do?

a. General

- i. Paralegals perform substantive legal work.
- ii. The ABA Model Guidelines for the Utilization of Paralegal Services sets out a list of approved substantive legal work, but generally a paralegal can perform many tasks normally performed by a lawyer, as long as the appropriate lawyer supervision is maintained.⁴
- iii. The lists of tasks can be state specific. In Texas, paralegals can perform the following substantive legal work: 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. This is not an exhaustive list.⁵

b. Paralegals are liars

- i. Another paralegal responsibility is to insure that lawyers are organized and meet their deadlines both court ordered and self-imposed deadlines. It is essential that paralegals find a way to help attorneys manage their time and clients. A paralegal should make it a habit to lie about deadlines. Paralegals should tell their attorney that a deadline is earlier than it actually is. This will provide the paralegal with enough time to do their

³ See Model Rules of Professional Conduct, Rule 5.3.

⁴ The Board of Directors of the State Bar of Texas approved the "ABA Model Guidelines for the Utilization of Paralegal Services" in May 1993.

⁵ State Bar of Texas, Paralegal Division, <http://txpd.org/page.asp?p=Paralegal%20Definition%20and%20Standards>

work, and the attorney with enough time to review the work product before it is filed.

- c. Paralegals develop and manage the personal realm of a client relationship
 - i. Lawyers are often terse and business oriented. In a lawyer-client relationship, lawyers sometimes forget or do not make time for the everyday friendly conversations that can lead to a better lawyer-client relationship. As a result, paralegals often fill this void, and take a more personal, friendly, and caring approach to dealing with and communicating with clients. Paralegals play a very important role in helping to form a well rounded lawyer-client relationship.
 - ii. This is not to say that an attorney can delegate the direct relationship required in an attorney-client relationship. Instead, this simply means paralegals are well equipped to perform the conversational niceties; the how are you; how are your children; how was the vacation type questions.
- d. What paralegals do in small to midsize practice?
 - i. Frequently in a small to midsize firm, paralegals are more of a hybrid employee performing both substantive legal work and administrative tasks. They do not bill their time to a client, and therefore performing administrative and clerical work does not detract from firm profits. It is not atypical for a smaller firm to hire one or two administrative assistants. A small to midsize firm can staff their firm primarily with paralegals because a paralegal can perform both job descriptions effectively.
- e. What paralegals do in a large firm setting?
 - i. Often in a large firm setting, paralegals are required to bill hours. So giving them administrative or clerical work would not be cost effective for the firm. Paralegals have a defined role in this type of work environment. They are basically analogous to an associate, but at a much lower billing rate. Of course, the attorney is required by the Model Rules to review all paralegal work product, but they perform many of the tasks that young associates perform, just at lower rates.
 - ii. It is important to distinguish between an administrative assistant and a paralegal. Both are instrumental in a successful law practice, but for very different reasons. It is important to ensure that paralegals are working on substantive legal matters, and 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.⁶

⁶ *Gill Sav. Ass'n v. Int'l Supply Co., Inc.*, 759 S.W.2d 697, 705 (Tex. App.—Dallas 1988, writ denied).

- iii. Lawyers can maximize their profit by properly delegating substantive legal work to paralegals and administrative and clerical work to administrative assistants.
 - f. Paralegals delegate work
 - i. Paralegals, in many instances, are the middleman between a lawyer and that lawyer's administrative assistant. Paralegals can delegate certain work to administrative assistants such as typing form discovery, petitions, and letters to clients and other attorneys. Often the paralegal will review the work product and edit it before handing it to the lawyer for their review. By delegating work, paralegals can devote more time to substantive legal work and avoid administrative and clerical work.
- IV. How lawyers can partner with paralegals⁷
- a. Lawyers can effectively develop a partnering relationship with paralegals by communicating the facts, players, and issues thoroughly in a case. This insures that both the attorney and the paralegal are in sync, and paralegals need to become fully familiar with all facts relevant to the matter; they need to review the relevant documents; and they need to attend all depositions or review all deposition transcripts. A paralegal's understanding of the factual underpinnings of a dispute must be as complete as the lawyer's, and they need to understand how the facts apply to the legal issues. It is also important for paralegals to be familiar with the legal arguments so they can identify and present significant facts to the lawyers.⁸
- V. Why Paralegals are instrumental in a successful law practice⁹
- a. Paralegals aids in decreasing costs & fees
 - i. As previously discussed, by delegating work to paralegals and where necessary paralegals delegating work to administrative assistants, the practice of law becomes more cost and time efficient. Law practices can get more done for less by efficiently utilizing paralegals, and in turn clients pay less. In economic times like this, a lawyer-paralegal partnering is essential.¹⁰

⁷ D. Jeffrey Campbell, *Letter from the Chair of the Standing Committee on Legal Assistants: Partnering with Paralegals*, ABA Spring/Summer 2003, Vol. 5, No. 3/4. (see also, ABA Standing Committee on Paralegals – Lawyers' Page at <http://www.abanet.org/legalservices/paralegals/lawyers.html>).

⁸ *Id.*

⁹ See ABA Standing Committee on Paralegals – Lawyer's Page at <http://abanet.org/legalservices/paralegals/lawyers.html>.

¹⁰ See ABA Standing Committee on Paralegals – Lawyer's Page at <http://abanet.org/legalservices/paralegals/lawyers.html>; Cynthia M. Mankus, *Paralegals: What Are They, Why Do I Need One, and What Can They Do for Me?*"

- b. Client Service
 - i. Paralegals allow for more client communication. Lawyers are often too busy to answer every client phone call, but paralegals can be a great resource for non-legal advice type information. This allows the client to get an immediate response to certain routine questions, and provides the attorney with more time to focus on substantive legal work.¹¹
- c. Improve the Bottom Line
 - i. A paralegal's time can be billed out separately to clients, and at a lower rate. Paralegals are generally paid less than an attorney, yet handle many tasks, under an attorney's supervision, that would otherwise be performed by an attorney.¹²

VI. Conclusion

- a. The purpose of this speech was to convey how attorneys utilize paralegals, and to highlight certain aspects of the attorney-paralegal relationship that makes for a more successful working relationship. Specifically, paralegals should be cognizant of the ethical ramifications of their conduct. Although paralegals are not ultimately responsible for unethical conduct, lawyers and employers are responsible. Moreover, this paper discussed the duties and roles paralegals play in a lawyer-client relationship; how to form an effective lawyer-paralegal partnership; and why that partnership is important to a successful law practice.

¹¹ Cynthia M. Mankus, *Paralegals: What Are They, Why Do I Need One, and What Can They Do for Me?*

¹² See ABA Standing Committee on Paralegals – Lawyer's Page at <http://abanet.org/legalservices/paralegals/lawyers.html>.