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## **Law Practice Management: Effective Use of Paralegals**

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Paralegals increase the profitability and efficiency of the law practice. What used to be considered a fledgling profession has evolved into a world of its own. This article summarizes the information presented at the Oakland County Bar Association New Lawyers Basic Skills Seminar Series.

### **Paralegal or Legal Assistant?**

Like attorney and lawyer the titles paralegal and legal assistant are used interchangeably. The difference, however, is that both attorney and lawyer clearly denote the same profession. Lately, the title legal assistant has been used by both paralegals and legal secretaries, creating some confusion.

The National Association of Legal Assistants (NALA) and the National Federation of Paralegal Associations (NFPA) two national groups representing paralegals, adopted the designations legal assistant and paralegal early in the profession's history. As state chapters were initiated they assumed the respective titles. Historically the titles referred to the same type of employee.

In recent years, the American Bar Association took the lead in changing their designation from legal assistant to paralegal, as did the International Paralegal Management Association, and NALA. Local associations, firms, and companies followed suit, including the State Bar of Michigan, the Oakland County Bar Association, and the Detroit Metropolitan Bar Association. While there is no rule about using either title, paralegal is becoming the preferred title, especially in light of the confusion that exists with the broader use of the title legal assistant.

### **Why Hire a Paralegal?**

Lawyers hire paralegals for a variety of reasons. One motivating factor is the opportunity to offer their clients legal services at a reduced rate. Some clients are more willing to hire a firm because of this option. A second objective is to maximize the time the lawyer spends on lawyering, work that justifies a higher fee. The bottom line is that a well-trained paralegal will add significant value to the practice while increasing profit.

## Paralegals Are Not Regulated

The paralegal profession is not regulated by any state or federal institution. There have been pockets of pro regulation groups that have advocated licensure but their success has been limited to a few states who now offer voluntary state certification.

NALA and NFPA offer voluntary certification through examination. NALA offers the Certified Legal Assistant or Paralegal (CLA or CP or CLAS for specialists) and NFPA offers the Registered Paralegal (RP). The tests are intense and continuing education credits are required to maintain the certification. While most employers do not seek out paralegals based on this achievement, it represents a personal and professional accomplishment that goes beyond the basic requirements of paralegal education.

Attorneys in Michigan rely on the State Bar of Michigan definition and guidelines when employing paralegals, which in large part was adopted from the American Bar Association. They define a paralegal as:

“any person currently employed or retained by a lawyer, law office, governmental agency, or other entity engaged in the practice of law, in a capacity or function which involves the performance under the direction and supervision of an attorney of specifically delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts such that, absent that legal assistant, the attorney would perform the task and which is not primarily clerical or secretarial in nature.”

Among other things, the guidelines state that:

- Paralegals must follow the Michigan Rules of Professional Conduct.
- A lawyer can ethically assign responsibilities to a paralegal (where the attorney reviews the paralegal’s work), provided
  - the paralegal’s non-lawyer status is clear
  - the paralegal does not convey opinions outside the firm
  - the attorney signs legal documents
  - the paralegal does not appear on behalf of a client
- A lawyer cannot delegate to a paralegal responsibility for:
  - establishing the client-lawyer relationship
  - establishing the fee arrangement
- Paralegals may have business cards and be on company stationery identified by name and with non-lawyer status/title.
- A lawyer must ensure no conflict of interest is presented arising out of the paralegal’s current or prior employment or from the paralegal’s other business or personal interests.
- A lawyer may not split legal fees with a paralegal nor pay a paralegal for the referral of legal business.
- A lawyer who employs a paralegal should facilitate the paralegal’s participation in appropriate continuing education and public service activities.
- A lawyer may include a reasonable charge for work performed by a paralegal.

## Paralegal Fees

In a landmark decision that turned the tide for the paralegal profession, Justice Brennan ruled that paralegals are separate members of the billing team, and that they encourage cost-effective legal services. In *Missouri v. Jenkins*, 491 US 274, 288, n 10; 109 S Ct 2463; 105 L Ed 2d 229 (1989) he stated that:

- The level of education must be appropriate for a paralegal
- There is a difference between paralegal and clerical work
- There must be a reliable method for recording paralegal work
- Paralegal services should be priced at market rate

More recently, *Richlin Security Service Company v. Chertoff*, 128 S.Ct. 2007 (2008), stated that paralegal fees are compensable under the Equal Access to Justice Act (EAJA) at prevailing market rates.

The recoverability of paralegal fees is also set forth in Michigan Court Rule 2.626, which states that

“an award of attorney fees may include an award for the time and labor of any legal assistant who contributed non-clerical, legal support under the supervision of an attorney, provided the legal assistant meets the criteria set forth in Article 1, § 6 of the Bylaws of the State Bar of Michigan.”

Paralegal billing rates are widely influenced by the level of work and the level of experience of the employee. Fees ranging from \$75.00 - \$140.00 per hour are not uncommon, and those rates fluctuate according to client and firm. Most importantly, and in keeping with *Missouri v. Jenkins*, time keeping records should be specific and clear as to the work done by a paralegal. A time entry, ‘prepared interrogatories’ could easily be interpreted as a clerical task, but ‘reviewed complaint and interview notes; drafted interrogatories’ more specifically describes a substantive task.

## Qualifications

The American Association for Paralegal Education (AAfPE) a group of primarily paralegal program directors and instructors, states that:

“in order to be a successful paralegal, an individual should possess not only a common core of legal knowledge, but also must have acquired vital critical thinking, organization, research, writing, oral communications, and interpersonal skills”

Paralegals that attend an American Bar Association approved paralegal program are required to take courses that satisfy the AAfPE requirements. Most programs offer a certificate of completion, an associate’s degree, or a bachelor’s degree. All designations are acceptable in the market, however, there has been a recent push toward requiring a bachelor degree. Firm and corporations set their own policy for employment qualifications.

Paralegal graduates are a colorful flock in that they bring a variety of different combinations of schooling and experience to the profession. Some paralegal graduates are fresh out of their first degree and have little or no industry experience. Others are entering a second career and bring the added value of knowledge and experience in fields such as engineering, teaching, or nursing.

Implementing a paralegal in the law practice should be as natural as hiring a new attorney. Following the State Bar of Michigan guidelines and the recommendations set forth in *Missouri v. Jenkins* will lead to greater profitability, and will provide clients with more efficient and affordable services.

### **Biography**

Linda S. Jevahirian is the founder and president of Legal Search & Management, Inc, a specialty firm that provides temporary and permanent recruiting to firms and corporations.

Linda received a Bachelor of the Arts from the University of Michigan, School of Education, and a Post Baccalaureate Diploma from the Paralegal Program at Oakland University. She is the past chair of the Paralegal Committee of the Oakland County Bar Association and the Paralegal Section of the Detroit Metropolitan Bar Association. She has been active with the State Bar of Michigan Paralegal/Legal Assistant Section since its inception as the Newsletter Editor and a Public Relations & Communications Committee Co-Chair.

Linda speaks regularly about the paralegal profession, and has been published by numerous legal journals, including Michigan Lawyers Weekly, Laches, the Detroit Legal News, and the Michigan Bar Journal. She also develops and conducts educational seminars. She can be reached at [linda@legalsearchonline.net](mailto:linda@legalsearchonline.net) or (248) 471-3443.