

UNIT THREE: THE PROFESSION

INTRODUCTION TO PARALEGALS AND ATTORNEYS

The Legal Profession: Paralegals and Attorneys Words and Terms. Chapter 2

By the end of Unit Three, you will

- have a better understanding of what paralegals do; and,
- know about attorneys.

Chapter 2

The Legal Profession: Paralegals and Attorneys

In this Chapter you will . . .

- ➔ Learn what a Paralegal is and does
- ➔ Learn the basics of being a Paralegal
- ➔ Learn what an attorney or lawyer is and does
- ➔ Learn about the legal profession

Paralegals in General

Definition of Paralegal from The American Bar Association [“ABA”]

A legal assistant or paralegal is a person qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible (The American Bar Association [“ABA”])

Basic Questions About Paralegals and Legal Assistants

What is the Difference Between the Terms Paralegals and Legal Assistants?

Nothing! There may have been at one time, but modern usage of these terms makes them interchangeable.

How is the Employment Outlook for the Profession?

Very good. The Bureau of Labor Statistics likes the job outlook and considers the growth in this profession “much faster than average.”¹

What Do Paralegals Do?

Paralegals perform a wide variety of legal work under attorneys’ supervision. There are very few things paralegals can’t do: e.g., trying cases in court and providing legal advice to clients.

Paralegals generally will perform tasks delegated to them by an attorney, provided the attorney supervises the work and maintains responsibility for the work product.

Some Duties of a Paralegal		
	AREA	DUTIES
1	Research	Researching statutes, cases, administrative law and other legal authority
2	Investigation	Investigating facts
3	Preparation	Preparing legal documents and forms
4	Case Files	Reviewing and organizing case files
5	Trial Notebook	Assisting at and preparing a case for trial, including the “trial notebook”
6	EBTs ² & Depositions ³	Assisting at examinations before trial and depositions
7	Digesting	Summarizing and digesting depositions

¹ For more go to their website at <http://www.bls.gov/oco/ocos114.htm>. For average salaries, see <http://www.bls.gov/oes/current/oes232011.htm>

² EBTs are Examinations Before Trials.

³ What are depositions? Look it up!

	AREA	DUTIES
8	Interrogatories ⁴	Drafting interrogatory questions and/or answers
9	Interviewing	Interviewing clients and witnesses
10	Administration	Handling administrative matters
11	Communication	Communicating information to clients and other people

Where Do Paralegals Work?

Paralegals are employed wherever there is legal work to be done (i.e., everywhere). They work for:

- large, medium and small law firms; solo practitioners (about 71% of all paralegals)⁵;
- various federal, state and local governmental agencies;
- in-house legal departments of corporations;
- service industries such as insurance carriers.

They also may work in their own homes or offices as “freelance” paralegals. Freelance paralegals work for attorneys on an as-needed basis (i.e., per diem). Their work is still performed under the direction and supervision of attorneys, as they cannot work directly for clients because that would be the unauthorized practice of law.

Why Do Attorneys Use Paralegals?

Attorneys use paralegals for a number of reasons, with the most popular answer being saving time and money. Attorneys who use paralegals can provide more efficient legal services by concentrating on the type of legal work that only they can perform while delegating other matters to the paralegals.

What is the Paralegal's Relationship with the Client?

Paralegals work under the supervision of attorneys, but paralegals frequently engage in direct client contact. Paralegals have face-to-face meetings as well as telephone conversations with clients in order to give or request information (i.e., factual research). Paralegals review and explain documents to clients, bring clients up to date on the status of cases, help clients get ready for court and answer clients' questions. Paralegals do not — nor can they legally — give

⁴ What are interrogatories? Look it up!

⁵ <http://www.bls.gov/oco/ocos114.htm>

legal advice, but they may relay advice to clients from attorneys, provided the client is told that the attorney told the paralegal to forward the legal advice.

What are the Ethical Obligations of Paralegals?

Although there is no certificate or license required to become a paralegal in New York (or any other state⁶), paralegals are bound by the same ethical standards as attorneys because they work for attorneys. All information a paralegal gets from a client or attorney is kept confidential, and they are not allowed to discuss the case with anyone outside their offices. The Rules of Professional Conduct require attorneys to supervise paralegals appropriately and adequately. The attorney is ultimately responsible for the paralegal's work. As such, an attorney can face disciplinary consequences for failure to adequately supervise a paralegal's work.

National Organizations for Paralegals	
NALS...the association for legal professionals	www.nals.org
National Association of Legal Assistants (NALA)	www.nala.org
National Federation of Paralegal Associations (NFPA)	www.paralegals.org
National Paralegal Association (NPA)	www.nationalparalegal.org/

Each has adopted its own code of ethics to assist paralegals in their work. Look at each of these websites and bookmark them in your browser.⁷

Specific Restrictions

Can a paralegal answer a client's questions?

Yes and No.

- **YES.** Paralegals may give factual and procedural information.
- **NO.** The paralegal cannot give legal opinions or advise in response to client questions.

⁶ There is a voluntary registration in Florida.

⁷ If you have no idea how to do this, now is the time to learn. Paralegals should be able to use browsers.

If a client asks a paralegal for a legal opinion, can a paralegal answer the question?

Not directly. Paralegals must inform clients that as paralegals they cannot give legal advice, only a lawyer can. A paralegal may relay advice specifically given to him or her by his or her supervising attorney. It is improper for a lawyer to place a paralegal in the position of being perceived as giving legal advice to a client.

May a paralegal directly communicate with an opposing party who is represented by counsel?

No. A paralegal may not communicate with an opposing party who is represented by counsel without the express written permission of opposing counsel. This rule applies to attorneys as well.

May a paralegal prepare and draft legal documents?

Yes. Paralegals draft legal documents while lawyers write legal documents. The lawyer is responsible for reviewing and approving the contents of any legal document he or she signs and submits to a client, party and/or court or other government entity.

May a paralegal engage in legal research?

Yes. But the product of the research, which usually constitutes legal advice, goes directly to the lawyer, not the client.

May a paralegal take a deposition?

No. A paralegal may attend a deposition and assist the lawyer during the deposition by taking notes and coordinating documents and exhibits.

May a paralegal sit at the counsel table in court?

Yes, if permitted by local court rules.⁸

May a paralegal have business cards?

Yes. A paralegal may have business cards on which he or she is clearly identified as a paralegal.

May a paralegal's name be included on law office letterhead?

Yes. The paralegal's name may be used provided he or she is clearly identified as a paralegal.

⁸ Paralegals can be of great assistance to lawyers at trial and can sit at counsel tables if court rules do not restrict their presence. Most of the time, they will sit directly behind the attorney in the audience.

May a paralegal sign correspondence from a law firm?

Yes, as long as the paralegal's status is clearly identified.

Very truly yours,
ABLE & ZERO, LLC
By _____
Charlotte D. Everett,
Paralegal

May an attorney have his/her paralegal sign the attorney's name to documents?

Yes. The attorney may direct the paralegal to sign the attorney's name to correspondence/pleadings on a document-by-document basis after the attorney has reviewed, supervised production, and approved the content of the document. The paralegal should indicate that he or she signed the attorney's name to the document. One method of indicating this fact is for the paralegal to initial the signature.

Can a paralegal's time be billed to a client?

Yes. The substantive legal work of a paralegal (work normally performed by an attorney in the absence of a paralegal) may be billed directly to the client in the same way an attorney's work is billed. To be billable, the work paralegals perform must not be clerical or ministerial. In circumstances where "attorney's fees" are reviewed or awarded by a court, the paralegal hours may be recovered as part of the attorney fee that is reviewed or awarded.

Dealing with Clients

Law is a service industry like medicine. When you go to a doctor, the doctor should be asking you questions that only a doctor would ask you. Sometimes you might think the doctor is asking very personal questions, but in order to serve and help you, they have to ask those questions. Lawyers and their staff need to do the same thing. Sometimes they will ask the kind of questions they would never want to be asked of them.

One particular topic that is sensitive is sex. Consider sex in the context of law. It is remarkable how much law and sex goes together. Most people having sex will never have to worry about the law as it relates to that sexual act.

Wrongful Sex and Law	
FACTUAL SITUATION	POTENTIAL CONSEQUENCES
A person has sex in public	A criminal prosecution
A person has sex without the other person's consent	A criminal prosecution
A person has sex with someone under the age of 17	A criminal prosecution
A married person has sex with someone he or she is not married to	A criminal prosecution; A ground for divorce
A spouse asks their spouse for sex and that spouse refuses for over a year	A ground for divorce
A married person wrongfully accuses the other spouse of having extramarital sex	A ground for divorce
A person has sex for money	A criminal prosecution
A person pays an actor to have sex with another person in order to make a movie	Might be protected by the First Amendment to the United States Constitution
A person pays an actor under the age of 18 to have sex with another person in order to make a movie	A criminal prosecution
A person has sex with an aunt or uncle	A criminal prosecution
A president of a corporation tells one of his or her employees that they can get a promotion if they have sex with him	A civil law suit (sexual harassment)
An adult couple have been dating for years and having sex for years and one decides to not have sex until there is an engagement ring or other gift and the person gives in and gives her an engagement ring	A criminal prosecution
A person offers to give another person illegal drugs for sex	A criminal prosecution
As result of a sexual act, a person becomes pregnant	A potential paternity law suit

When a client comes to you with any of the above situations, you need to be prepared to ask them about sex. Here's the good news, you will never have to talk about your life with them. Failing to ask them the appropriate questions or asking them an inappropriate question would be a violation of ethics and possibly negligence/malpractice⁹.

⁹ Negligence is (look it up in you law dictionary).

You may also come across a client who either did something or is doing something that you find morally disgusting. You may think that the client doesn't deserve your time. Get over it. The greatest person in the world as well as everyone else — no matter how bad you think they are or how bad the act they are accused of doing is — all deserve due process and equal protection under the law. It is all about serving the client, serving the public, serving the profession, serving the legal system, and serving the constitution. It is about fulfilling the oath or affirmation all attorneys take upon admission to a state to practice law: to support the United States Constitution. In the constitution is due process and equal protection.¹⁰

ETHICS ALERT!!!

Think about the kinds of cases you are not comfortable with (e.g., an ugly divorce, rape or murder defense). Think about the type of people with whom you would never want to deal with as clients (e.g., a nasty person, a celebrity with an unending ego, rich tax cheats, a rapist, murder, corporate executive who caused his employees to lose their jobs and retirement savings, or a cheating spouse). Now think about how you are going to deal with this and get over it in order to serve the public. As a paralegal you rarely have a choice. Assisting in the defense of a rapist is not condoning the behavior. You are condoning equal protection under the law and due process. That is what lawyers are suppose to do and that is your job as well.

Introduction to Lawyers

When we see lawyers on TV and in the movies they are either preparing for trial or conducting a trial. However, most lawyers never step inside of a court room.¹¹ Lawyers very often help clients in matters that have nothing to do with legal disputes or legal cases. For example, clients are advised about the legal aspects of starting a business or engaging in a partnership, assisted in buying or selling a home, and counseled on tax matters or estate planning (e.g., a will). Often, clients receive a regular legal check-up that — like a medical check-up — is designed to prevent problems or simply solve them.

Where does a Lawyer Practice Law?

A lawyer normally spends more time in an office than in a courtroom. The practice of law most often involves researching legal developments, investigating facts, writing and preparing legal documents, giving advice, and settling disputes. Laws change constantly. New law is

¹⁰ The 5th and 14th Amendments to the United States Constitution.

¹¹ Other than to get sworn in to practice law, or if they are charged with a crime (e.g., driving while intoxicated).

enacted and prior law is amended and repealed. In addition, judicial decisions in court cases regularly alter what the law currently means, whether the source of law is the United States Constitution or a state constitution, federal or state statutes, or federal, state, and local codes and regulations. For these reasons, a lawyer must put much time into knowing how the laws and the changes will affect each circumstance.

The Two Main Duties of a Lawyer	
1	Represent the client in any forum necessary (e.g., a court, before a legislature or committee, before a government agency, before a coop board, before the public); and
2	Protect a client's rights.

To carry out these duties, a lawyer must know the law and be a good communicator.

What are the professional requirements for becoming a lawyer or attorney?

To understand how laws and the legal system work together, lawyers must go to law school. Each state controls the practice of law within that state and has enacted standards that must be met before a person is licensed to practice law there.

The Path to Becoming an Attorney		
▼	BA, BS, BBA or BFA¹²	Have a bachelor's degree or its equivalent
▼	JD¹³	Complete a law program at an accredited law school (three or four years) ¹⁴
▼	BAR	Pass a state bar examination ¹⁵ , which usually lasts for two or three days ¹⁶ and the Multistate Professional Responsibility Exam (ethics)

¹² Bachelor of Arts, Bachelor of Science, Bachelor of Business Administration, or Bachelor of Fine Arts. Basically any undergraduate degree, other than an Associate's Degree, will do.

¹³ Juris Doctor

¹⁴ There are exceptions to this rule.

¹⁵ The bar examination is suppose to test knowledge in selected areas of law and in professional ethics and responsibility. Graduates of the two law schools in Wisconsin get admitted to the Wisconsin bar without taking an examination. After five years they can get admitted to many states through reciprocity without taking the bar exam!

¹⁶ In New York, it is a two-day exam. The first day is on New York law and the second day is the multistate bar exam (MBE).

▼	ETHICS	Pass a character and fitness review; each applicant for a law license must be approved by a committee that investigates his or her character and background
▼	OATH	Take an oath swearing to uphold the laws and the state and federal constitutions and
●	LICENSE	Receive a license from the appropriate state court. ¹⁷

Once a person becomes a lawyer, in order to maintain their license to practice law, he or she must take continuing legal education courses every year until they retire from the practice of law.

When Does a Person Need a Lawyer?

When a person has a legal problem. There are many types of legal problems. A person might consider retaining a lawyer if he or she is accused of committing a crime, involved in or is contemplating a lawsuit, or if he or she was involved in an auto accident. Although lawyers usually help people with legal problems after they arise, perhaps the best time to consult a lawyer is before a legal problem arises.

Common Situations Where Legal Advice Is Helpful	
AREA OF LAW	COMMON SITUATION
Real Estate Law	The sale or purchase of a home, real estate, or a business
Business Law	The formation a business (e.g., corporation or partnership)
Wills, Trusts and Estates	The creation and/or establishment of a will, trust, or estate plan
Family Law	A domestic or martial issue
Tax Law	A tax problem
Tort Law	An accident involving personal injury or property damage
Criminal Law	An arrest or questioning by law enforcement officials concerning that person's conduct

¹⁷ In most states, that is the state's highest court. In New York, the license is issued from the state's intermediate appellate court, the Appellate Division.

Areas of Legal Practice		
AREA	WHAT LAWYERS DO	WHAT PARALEGALS DO
Business Law	Advise clients about starting a new business (corporation, partnership, etc.), general corporate matters, business taxation, and mergers and acquisitions	Draft contracts, articles of corporation; investigation
Criminal Law	Defend or prosecute those accused of committing a crime	Draft motions and memoranda of law, interview clients and witnesses, prepare proposed jury instructions
Estate Planning	Advise clients in property management, drawing wills, probate, and estate planning	Interview clients, draft wills, trusts and testamentary substitutes, prepare court documents
Family Law	Represent individuals in separation, annulment, divorce, and child custody matters	Interview clients, draft complaints, prepare court documents
Immigration	Represent parties in proceedings in administrative agencies and court involving naturalization and citizenship	Interview clients, prepare administrative agency and court documents
Intellectual Property Law	Deal with issues concerning trademarks, copyright regulations, and patents	Interview clients, draft contracts, prepare agency documents
Labor Law	Advise and represent employers, unions and employees on questions of union organizing, workplace safety, and compliance with government regulations	Interview clients, draft contracts and agreements; prepare memoranda of law, prepare employment booklets.
Personal Injury	Represent clients injured intentionally or negligently, and those with workers' compensation claims	Interview clients, draft complaints, prepare court documents
Real Estate	Assist clients in developing property; re-zoning; and buying, selling, or renting homes or other property	Interview clients, draft agreements and contracts, prepare closing statements
Taxation	Counsel businesses and individuals in local, state, and federal tax matters	Interview clients, draft contracts, prepare agency documents

