CHAPTER I

EFFECTIVE UTILIZATION AND SUPERVISION OF PARALEGALS

I. INTRODUCTION

Law offices, corporations, government agencies and non-profit organizations all use paralegals. How paralegals are utilized in these settings can vary tremendously. I have been to law offices that maintain minimum billing hours for paralegals and secretaries are assigned to paralegals so that paralegals can focus on work that can be billed. I have been to law offices where everyone in the office who is not an attorney is referred to as a paralegal — the receptionist is a paralegal, the data entry person is a paralegal, the courthouse runner is a paralegal — and the highest level work that ANY “paralegal” in the office will do is copying, filing and answering phones. There are also law offices where the attorneys hire paralegals to be the “experts” in the law practice — for example, when an attorney does not know how to do a title search for a residential real estate closing and hires a paralegal who is an expert in that field — where attorneys apparently authorize paralegals to explain legal documents to clients, to provide legal advice directly to clients and to represent clients in depositions.

This chapter is meant to provide some guidance for the appropriate utilization of paralegals. Law firms that utilize paralegals to their full potential are able to serve their clients with a better quality work product at a better price. Law firms that utilize paralegals will encourage continuing education and encourage paralegals to join professional associations and develop a high degree of professionalism. Proper utilization also acknowledges limitations on what paralegals may and may not do — namely, paralegals may not create or explain legal documents, provide legal advice, set fees or represent a client in court. Does this mean that a paralegal may not write a complaint or do legal research and write an appeal? No. Under the supervision of an attorney, a paralegal can certainly write the first draft of the complaint or the appeal — but attorney supervision is the key. Does this mean that a paralegal cannot answer the questions posed to them by a client? Yes, except when that question has been relayed to the attorney and an answer relayed back to the paralegal. The end of the chapter provides a list of resources available from the American Bar Association and the North Carolina State Bar, the ABA’s Guidelines for Utilization of Paralegals, the North Carolina State Bar’s Guidelines for Utilization from 2000, and relevant North Carolina Laws.

II. HIRING PARALEGALS

A real estate attorney in the eastern part of North Carolina hired a paralegal to assist with his practice. The paralegal either had signing authority on the checking account or prepared checks that the attorney simply signed without reading, and the paralegal did all of the bookkeeping for the practice. As bills came due, the paralegal would write checks from the operating account to pay the bills. If there was not enough money in the operating account to pay the operating expenses, the paralegal would write a check from the lawyer’s trust account. After a few months,
the trust account fell short and a client complained to the North Carolina State Bar. When called into the grievance committee, the attorney was asked why he wrote operating expenses from his trust account. His answer was that he had hired a paralegal with a number of years of experience and that he did not understand why she would have written the checks from his trust account. The paralegal was then called into the grievance committee and asked the same question. Her answer was, “That’s what I did at my last firm.”

There are a couple of lessons to be learned from this true story. The first lesson is that the attorney is ultimately responsible for the work of the paralegal — including not just the legal aspect of the job, but even the operation of the law office. “My paralegal made me do it” just does not work when a lawyer clearly does not live up to his or her responsibilities, and they are responsibilities that cannot be given to anyone else.

The second lesson is that simply hiring a paralegal with experience and letting the paralegal work in the new job without adequately assessing competency is not proper utilization. Not only do you need to adequately assess competency of a new hire, you also need to provide support through frequent office meetings of your attorneys and staff, through the support of continuing education for paralegals and involvement in professional paralegal associations.

How do you assess the competency of a new hire? First, examine the educational background of the new hire. Did the applicant earn an associate’s degree or a bachelor’s degree? Did the applicant earn an associate’s degree or a bachelor’s degree in paralegal studies or a certificate in paralegal studies after they received their degree? Was the program approved by the American Bar Association (ABA)? Is the program a member of the American Association for Paralegal Education (AAfPE)? Is the program one from the community college system? In determining your needs, these are all good preliminary questions to ask regarding the educational background of the paralegal. The ABA and AAfPE, along with national paralegal organizations, have created a checklist for determining whether or not a program is a quality program. That information can be found at www.aafpe.org.

The North Carolina State Bar has created a new voluntary certification for paralegals who meet minimum standards of competency. Paralegals who choose to seek the designation and meet the minimum qualifications may refer to themselves as “North Carolina Certified Paralegals.” Paralegals can meet the qualifications for this designation in a few ways. From July 1, 2005-June 30, 2007, paralegals could meet the minimum standards through a combination of education and experience. If qualifying through experience only, the paralegals were required to take a three-hour course on ethics prior to submitting their application. From July 1, 2007 forward, those seeking the NCCP designation are required to have graduated from a “qualified program” (programs meeting certain minimum criteria in terms of hours and subjects studied) and to have passed a basic competency test. Regardless of how paralegals qualify for the NCCP designation, they all will have to complete six hours of continuing legal or paralegal education per year, one of which must be in legal ethics. More information can be found at www.nccertiﬁedparalegal.gov.
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Two national organizations offer voluntary certifications for paralegals as well. The National Association for Legal Assistants (NALA) offers the designation of “CLA” (certified legal assistant), or “CP” (certified paralegal) and “ACP” (advanced certified paralegal) based on paralegal education and a test. The National Federation of Paralegal Associations (NFPA) offers the designation of “CRP” (CORE Registered Paralegal) and “RP” (Registered Paralegal) also based on paralegal education and a test.

Some employers are more concerned with experience than minimum education levels. In that case, it would be helpful for the employer to ask the prospective employee questions during the interview to determine what type of experience the paralegal has (Ex: In a closing practice, what are all of the steps that the paralegal typically takes to work on a closing from the beginning to the post-closing procedures?). Ask questions about how they would handle issues that are out of the ordinary or ordinary matters which can often lead to client dissatisfaction (Ex: How did the paralegal handle questions regarding the failure of a bank to cancel a deed of trust a year or two after the paralegal had handled the closing?). How does the paralegal handle stress? Some employers require prospective hires to take typing and grammar tests.

There are still some employers who prefer to hire paralegals with no experience at all. They generally will state something like, “I like to train my paralegals myself so that they learn correctly the first time.” I would suggest that this is a method that could work in theory, but rarely works in fact. I can think of, maybe, two attorneys who could actually make this work — both are tremendously well organized, patient, and, if they commit to training someone, they would put in the enormous amount of time to actually do the training and commit resources to make certain that the paralegal took a number of continuing education classes and was introduced to paralegal associations. Neither of those attorneys train their paralegals themselves — they seek to find paralegals with paralegal education or experience. Often, attorneys who choose this route are too busy to really train and can become irritated with ceaseless questions about things that the attorney often believes should be obvious, but are not to someone without any exposure to the legal field.

III. TRAINING AND CONTINUING EDUCATION

So you have hired someone with paralegal education and/or experience; that means that the new hire is immediately useful — but they will need training to know how your particular office works. The first question to ask is how good is your in-house paralegal training program? What types of training are offered?

- Do you provide paralegals with paralegal mentors?
- Do you provide new hires with half a day or two days or a week for orientation where new hires can learn to use the applicable computer programs, how to fill out time sheets in your office, what benefits are available, and what the typical processes or procedures are for your office?
• Have you developed checklists for normal transactions in your office (i.e. gathering discovery, creating an S-Corp, completing a title search, probating an estate)? If not, this might be a great first assignment for a new hire.

• Do you have a preferred way of working that the new hire needs to fit? Do you need a paralegal to remind you of deadlines a week ahead of time or do you prefer to be reminded a week ahead of time and daily after that?

• Do you go through a typical transaction with the paralegal and provide the paralegal with information on common problems in the office and solutions to those problems?

• Do you have a procedure for the paralegal to receive feedback when the paralegal has questions or concerns?

• Do you have weekly, bi-weekly or monthly in-house programs for paralegals in your office or paralegals and attorneys together in your office?

• Do you have weekly, bi-weekly or monthly meetings of all of the paralegals or paralegals and attorneys to identify potential problems or highlight solutions to problems that can be replicated across your firm or business?

Continuing education is also important for paralegals — and can be cost-effective for attorneys. Paralegals will need to maintain their skills and expertise in whatever area they work. Continuing education is important — from practical how-to courses to updates in their area of the law, paralegals needs continuing education to assist attorneys with substantive legal work and to be able to work effectively as part of a legal team to represent clients effectively.

Continuing education is linked to paralegal associations. There are a number of paralegal associations in North Carolina. Some state-wide examples are the North Carolina Bar Association’s Paralegal Division, the North Carolina Advocates for Justice’s Legal Assistants Division and the North Carolina Paralegal Association. All of these associations provide members with networking and social opportunities and access to continuing education — in some cases at a significantly reduced cost. Most counties have local paralegal associations that may hold meetings on a monthly or bi-monthly basis for paralegals to get to know one another and to provide continuing education. All of these associations promote professionalism, high ethical standards and enhanced competency.

IV. UTILIZING PARALEGALS

While it would be too cumbersome to provide a complete list of everything a paralegal can do in every specialty, the general rule is that at the highest levels, paralegals are doing substantive legal work. The American Bar Association defined paralegals (the ABA recognizes that the terms paralegal and legal assistant can be synonymous) in 1986 as: A legal assistant is a person, qualified through education, training or work experience, who is employed or retained 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 an attorney, of specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant, the attorney would perform the task.
This definition was amended in 1997 to state: 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.

Both of the above definitions stress substantive legal work. Another way to look at it is billable work. Depending on the type of office in which the paralegal works, the paralegal may be doing all substantive legal work or spending a portion of his or her time on substantive legal work. If a paralegal is spending all of his or her time on photocopying, file maintenance, typing and receptionist duties, you are not utilizing a paralegal in a way that assists the attorney or clients.

Substantive legal work that paralegals should be engaged in, under the supervision of an attorney, include:

- Legal research and writing;
- Cite checking;
- Drafting contracts;
- Drafting wills;
- Drafting complaints;
- Completing title searches;
- Drafting discovery;
- Drafting appeals;
- Investigating;
- Interviewing clients;
- Preparing drafts of legal documents;
- Assisting clients in the preparation of documents;
- Preparing trademark searches;
- Assisting in the preparation of trial notebooks;
- Gathering, reviewing, summarizing and indexing documents for use at trial;
- Attending trials and assist attorneys during trial;
- Drafting pre-trial orders; and
- Coordinating experts.

Note that all of the above are work that, absent such assistant, the attorney would perform the task. It is important to stress that all of the above tasks must be performed under the supervision of an attorney.

During the trial of the Oklahoma City Bombing, a paralegal was tasked with finding and sifting through the evidence available for trial. A paralegal for the prosecutor interviewed the witnesses, wrote down their testimony, and provided an assessment of which witnesses would be most effective at trial. The opening statement of the prosecutor included a photo montage of the event with a soundtrack of the event. The paralegal had searched for photographs from a number of sources and found the best photographs for the montage. Because of the number of law offices