



By Sharon A. Werner

# THE Common Sense

## OF Paralegal Utilization



Over the past 40 years, paralegals/legal assistants have established a role as long-term, cost-effective, essential participants in the delivery of legal services. Still, the benefits to be attained from including a paralegal/legal assistant as a member of the legal team have been overlooked or misjudged by many. As law firms, in-house legal departments, and government agencies seek new ways to deliver cost-effective quality services, they must not overlook the value that paralegals/legal assistants can provide. This article seeks to demonstrate how, with the use of paralegals/legal assistants, private law firms, in-house legal departments, and government agencies can deliver improved legal services, save their clients money, and still enhance their bottom line. It begins with an examination of who a paralegal/legal assistant is and just what he or she does.

### Fast Facts

A paralegal/legal assistant, appropriately supervised by an attorney, can perform many tasks normally performed by attorneys.

When properly utilized and priced, the services of a paralegal/legal assistant can provide a profit on the hours billed.

*Legal Assistant Today* reports results of a 2006 survey showing paralegal/legal assistant salaries averaging \$47,814 for the Midwest region.

NALA's Model Standards and Guidelines for Utilization of Legal Assistants/Paralegals bar a paralegal/legal assistant from ethically accepting or rejecting cases, setting fees, giving legal advice, and appearing in court.

## The Title

It is commonplace these days to hear the term “legal assistant” applied to a legal secretary or other clerical assistant. Although this may be a well-intentioned attempt to show respect to the secretary or clerical assistant for the demanding work done, the misuse of the term creates confusion and suggests that the clerical employee is a credentialed paralegal/legal assistant. Indeed, “paralegal” and “legal assistant” are synonymous professional titles with specific, well-defined parameters requiring that the work done be substantive, rather than clerical, in nature.

For example, the American Bar Association (ABA) defines a paralegal/legal assistant as follows:

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 and who performs specifically delegated substantive legal work for which a lawyer is responsible.<sup>1</sup>

The ABA's original definition, adopted in 1986, included only the term “legal assistant.” The term “paralegal” was added because the titles were deemed synonymous—like “lawyer” and “attorney.” Other professional associations, such as the National Association of Legal Assistants/Paralegals (NALA), the International Paralegal Management Association, and the American Association for Paralegal Education all assert that “legal assistant” and “paralegal” are synonymous. Even the U.S. Department of Labor's Bureau of Labor Statistics *Occupational Outlook Handbook* notes the interchangeability of the titles. The use of either title is generally determined by the geographic location of the employee.

On a practical basis, the work done by a paralegal/legal assistant is the type of work that may be billed to the client. Courts have held that fees for paralegal services are recoverable so long as they are not clerical functions and are substantive in nature—work that the attorney would perform unless performed by a paralegal.<sup>2</sup> Further, MCR 2.626 provides that

[a]n 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, Sec 6 of the Bylaws of the State Bar of Michigan.

## Qualifications

Article 1, Sec 6 of the Bylaws of the State Bar of Michigan establishes the minimum qualifications for membership in the Legal Assistants Section:

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 the legal assistant, the attorney would perform the tasks and which is not primarily clerical or secretarial in nature, and who:

- a) has graduated from an ABA-approved program of study for legal assistants and has a baccalaureate degree, or
- b) has received a baccalaureate degree in any field, plus not less than two years of in-house training as a legal assistant, or
- c) has received an associate degree in the legal assistant field, plus not less than two years of in-house training as a legal assistant, or
- d) has a minimum of four years of in-house training as a legal assistant.

Additionally, NALA has established the following standards to be used in determining an individual's qualifications as a legal assistant/paralegal:

1. Successful completion of the Certified Legal Assistant/Certified Paralegal (CLA/CP) examination of NALA;
2. Graduation from an ABA-approved program of study for legal assistants;
3. Graduation from a course of study for legal assistants that is institutionally accredited but not ABA-approved, and which requires not less than the equivalent of 60 semester hours of classroom study;
4. Graduation from a course of study for legal assistants, other than those set forth in preceding items two and three, plus not less than six months of in-house training as a legal assistant;

5. A baccalaureate degree in any field, plus not less than six months of in-house training as a legal assistant;
6. A minimum of three years of law-related experience under the supervision of an attorney, including at least six months of in-house training as a legal assistant; or
7. Two years of in-house training as a legal assistant.<sup>3</sup>

As a general rule, a paralegal/legal assistant should have outstanding organizational skills, analytical abilities, and written and verbal communication skills. Maturity, judgment, and common sense, along with initiative and dedication, are also key attributes. A well-qualified and experienced paralegal/legal assistant should be able to step into a position without additional training.

## Responsibilities

A paralegal/legal assistant, appropriately supervised by an attorney, can perform many tasks normally performed by attorneys. The ABA and NALA have developed guidelines for determining the duties that can be appropriately delegated to a paralegal/legal assistant.<sup>4</sup> Both sets of guidelines emphasize that the work delegated must be of a substantive nature, requiring education, knowledge, and expertise, distinguishing it from clerical or work routine in nature.

The State Bar of Michigan has also promulgated Guidelines for the Utilization of Legal Assistants (State Bar Guidelines), readily accessible on the State Bar website.<sup>5</sup> Guideline 2 of the State Bar Guidelines outlines the assigning attorney's responsibility in delegating work to a paralegal/legal assistant:

A lawyer may ethically assign responsibility to a legal assistant for the performance of tasks relating to the representation of a client and the law firm's delivery of legal services, commensurate with the experience and training of the legal assistant, and where the lawyer directly supervises the legal assistant and reviews the legal assistant's work product before it is communicated out of the law firm...<sup>6</sup>

NALA's Model Standards and Guidelines for Utilization of Legal Assistants/Paralegals bar a paralegal/legal assistant from ethically

accepting or rejecting cases, setting fees, giving legal advice, and appearing in court.<sup>7</sup> Among the duties a paralegal/legal assistant may ethically perform are:

- conducting client interviews and maintaining general contact with the client after the establishment of the attorney-client relationship, so long as the client is aware of the status and function of the legal assistant, and the client contact is under the supervision of the attorney;
- locating and interviewing witnesses, so long as the witnesses are aware of the status and function of the legal assistant;
- conducting investigations and statistical and documentary research for review by the attorney;
- conducting legal research for review by the attorney;
- drafting legal documents for review by the attorney;
- drafting correspondence and pleadings for review and signature of the attorney;
- summarizing depositions, interrogatories, and testimony for review by the attorney;
- attending executions of wills, real estate closings, depositions, court or administrative hearings and trials with the attorney; and
- drafting and signing letters, providing the legal assistant's status is clearly indicated and the correspondence does not contain independent legal opinions or legal advice.<sup>8</sup>

Paralegals/legal assistants can also play a major role in computer litigation support and contract administration.<sup>9</sup>

With their performance of the above duties, paralegals/legal assistants can significantly assist attorneys practicing in literally any area of law, including alternate dispute resolution, appellate practice, asbestos litigation, bankruptcy, business/corporate, collections, commercial litigation, criminal, domestic relations/family law, environmental law, foreclosures, immigration, intellectual property, labor/employment, landlord/tenant litigation, personal injury/medical malpractice, probate and estate administration, public benefits, real property, securities/municipal bonds, tax, and workers' compensation.<sup>10</sup>

On a practical basis, the work done by a paralegal/legal assistant is the type of work that may be billed to the client. Courts have held that fees for paralegal services are recoverable so long as they are not clerical functions and are substantive in nature—work that the attorney would perform unless performed by a paralegal.

## It Makes Sense

In today's economy, everyone is working harder and leaner. The practice of law is no exception. Competition is everywhere and clients expect more for less. To compete, lawyers must maximize productivity and cost-efficiency. When properly utilized as part of a legal team, paralegals/legal assistants can offer (1) improved client services, (2) lower costs for the client, and (3) greater profit for the law firm.

## Improved Client Services

As clients' demands and competition increase, so does the lawyer's workload. An overloaded attorney can improve client services by delegating some of that load to a well-qualified paralegal/legal assistant. The paralegal/legal assistant can ensure that deadlines are met, interface with the client, and assist in the preparation of documents to move the client matter forward. Thus, while the attorney is occupied with matters requiring his or her expertise, the paralegal/legal assistant, with proper direction, can originate the drafting of pleadings/correspondence and conduct research or client/witness interviews. When a paralegal/legal assistant is involved with a matter from the beginning, he or she can be particularly helpful in communicating knowledgeably with the client on the matter and, in most cases, be more readily available to the client than the lawyer. This assures the client that the matter is in good hands and is proceeding in a timely manner to conclusion.

However, the use of a paralegal/legal assistant must be effective to be cost-efficient. The following four factors have been identified as nearly always present in law firms successful in improving their client services through the use of paralegals:

- (1) The lawyer and the client have confidence in the legal assistant.
- (2) The lawyer assigns the proper work.
- (3) The legal assistant has full involvement on the file.
- (4) The lawyer properly prices the paralegal's work.<sup>11</sup>

If any of these four factors is missing, it is likely that the firm is not effectively using its paralegals/legal assistants, and client services may not be improved.

## Lower Cost to the Client

Cost to the client can be lowered if a lawyer delegates work to paralegals/legal assistants, since paralegals/legal assistants typically bill lower hourly rates than partners or associate attorneys. This applies, however, only if a lawyer's total billable hours on a case are reduced as a result of delegating some tasks to a paralegal/legal assistant. Although a client may want the most proficient attorney leading the team on his or her matter, sophisticated clients expect their lawyers to select a range of qualified team members, each billing at a rate lower than the lead attorney, to contain overall costs. These clients have come to expect quality paralegals/legal assistants as an integral part of their legal team.

Arthur G. Greene and Therese A. Cannon, in their book *Paralegals, Profitability, and the Future of Your Law Practice*, illustrate the concept of the value to the client in employing a legal assistant in the following chart:

## Comparative Client Cost of Lawyer Alone and of Lawyer Plus Paralegal<sup>12</sup>

### Example 1

Assume all work is performed by the lawyer at a rate of \$150 an hour.

Interview with Client	2 hr.	\$300
Interview Two Witnesses	2 hr.	\$300
Gather Information	2 hr.	\$300
Review Documents	2 hr.	\$300
Legal Research and Analysis	3 hr.	\$450
Draft Pleading	2 hr.	\$300
Trial Preparation	4 hr.	\$600
Trial	4 hr.	\$600
<b>TOTAL</b>	<b>21 hr.</b>	<b>\$3,150</b>

The lawyer invests 21 hours in the case and bills the client \$3,150.

### Example 2

Now look at the same case with a substantial portion of the work being delegated to a paralegal at \$60 an hour.

<b>Interview with Client</b>		
Lawyer	2 hr.	\$300
Paralegal	2 hr.	\$120
<b>Interview Two Witnesses</b>		
Paralegal	2 hr.	\$120
<b>Gather Information</b>		
Paralegal	2 hr.	\$120
<b>Review Documents</b>		
Paralegal	2 hr.	\$120
<b>Legal Research and Analysis</b>		
Lawyer	1 hr.	\$150
Paralegal	2 hr.	\$120
<b>Draft Pleading</b>		
Paralegal	2 hr.	\$120
<b>Trial Preparation</b>		
Lawyer	1 hr.	\$150
Paralegal	3 hr.	\$180
<b>Supervise Paralegal</b>		
Lawyer	2 hr.	\$300
<b>Trial</b>		
Lawyer	4 hr.	\$600
Paralegal	4 hr.	\$240
<b>TOTAL</b>	<b>29 hr.</b>	<b>\$2,640</b>

Now the lawyer invests 10 hours, the paralegal, 19; billing is \$2,640, saving the client \$510.

## Law Firm Profits

When properly utilized and priced, the services of a paralegal/legal assistant can provide a profit on the hours billed. Special Counsel (a legal staffing agency with offices in Michigan that provides temporary and direct-hire placement of legal professionals, including paralegals/legal assistants) conducted a paralegal/legal assistant survey in 2006 in which 50 percent of the respondents reported having an annual base salary between \$31,000 and \$50,000 and 33 percent of respondents reported an annual base salary of over \$50,000.<sup>13</sup>

NALA has conducted a biennial National Utilization and Compensation Survey since 1986. The most recent survey, conducted in 2004, reports the average billing rate for the Great Lakes Region (Illinois, Indiana, Michigan, Ohio, and Wisconsin) at \$95 per hour and the average salary for the Great Lakes Region as \$42,266.<sup>14</sup>

*Legal Assistant Today*, an independent trade magazine for paralegals/legal assistants, also conducts an annual national salary survey. Results for Michigan paralegals/legal assistants can be found in the Midwest region reporting results. The results for 2006 show the average salary for the Midwest region as \$47,814, up 1.8 percent from 2005. Salaries in the Midwest region have increased from 2001 to 2006 an average of five percent. Factors related to salary include location (population of the city), level of education, years of experience, and size of firm.<sup>15</sup>

Arthur G. Greene, in his book *The Lawyer's Guide to Increasing Revenue: Unlocking the Profit Potential in Your Firm*, illustrates the typical breakdown of paralegal costs in the following example:

Salary	\$45,000
Fringe Benefits	\$10,000
One-third Secretary Position (includes salary and fringe benefits)	\$15,000
Share of Other Overhead (office space, supplies, utilities, etc.)	\$10,000
<b>Total Cost of Maintaining Paralegal</b>	<b>\$80,000</b>

Using the \$95 hourly rate for a paralegal/legal assistant who bills 1,600 hours annually yields a revenue potential of \$152,000. Assuming a 10 percent write-off factor, this results in revenues of \$136,800 with costs of \$80,000, leaving anticipated profit in the vicinity of \$56,800. In actual practice, the amount of profit varies widely and depends on the qualifications of the paralegal, the experience of the paralegal, the billing rate, and the firm's cost structure.<sup>16</sup>

## Conclusion

Effective utilization of paralegals/legal assistants makes sense, and dollars too. The hiring of and proper delegation of work to

a qualified paralegal/legal assistant can not only enhance the delivery of effective client services, but also save money for both the client and the practitioner. Although a part of the legal landscape for 40 years, paralegals/legal assistants may still be underrated by private law firms, in-house law departments, and government agencies, which may not yet fully appreciate the benefits they can provide. Paralegals/legal assistants are and will continue to be a vital asset in the delivery of effective legal services in Michigan. ■



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## FOOTNOTES

1. Model Guidelines for the Utilization of Paralegal Services, n 1, ABA Standing Committee on Paralegals, available at <<http://www.abanet.org/legalservices/paralegals/downloads/modelguidelines.pdf>> (accessed June 6, 2007).
2. *Missouri v Jenkins*, 491 US 274 (1989), n 10.
3. Model Standards and Guidelines for Utilization of Legal Assistants/Paralegals, 2007, NALA, available at <<http://www.nala.org/98model.htm>> (accessed June 6, 2007).
4. See nn 1 and 3, *supra*.
5. Guidelines for the Utilization of Legal Assistant Services, State Bar of Michigan, available at <<http://www.michbar.org/legalassistants/membership.cfm>> (accessed June 6, 2007).
6. *Id.*
7. See Model Standards and Guidelines, n 3, *supra*.
8. *Id.*
9. For a comprehensive list of typical responsibilities of paralegals/legal assistants in these fields of practice, see *Paralegal Responsibilities*, NFPA, available at <<http://www.paralegals.org/displaycommon.cfm?an=1&subarticlenbr=114>> (accessed June 6, 2007).
10. *Paralegal Responsibilities*, NFPA (1996), available at <<http://www.paralegals.org/displaycommon.cfm?an=1&subarticlenbr=838>> (accessed June 6, 2007).
11. Greene, *Leveraging with Legal Assistants: How to Maximize Team Performance, Improve Quality, and Boost Your Bottom Line*, American Bar Association (1993).
12. Greene & Cannon, *Paralegals, Profitability, and the Future of Your Law Practice*, American Bar Association (2003).
13. 2006 Survey of Salary and Benefits, available at <<http://www.michbar.org/legalassistants/news.cfm>> (accessed June 6, 2007).
14. 2004 National Utilization and Compensation Survey Report, available at <[http://www.nala.org/Survey\\_Table.htm](http://www.nala.org/Survey_Table.htm)> (accessed June 6, 2007).
15. Flatten, *It's reunion time! Our 15th annual salary survey results, and a look at where it all started*, *Legal Assistant Today*, Vol 24, No 4 (March/April 2007).
16. Greene, *The Lawyer's Guide to Increasing Revenue: Unlocking the Profit Potential in Your Firm*, American Bar Association (2005).