

Chapter 4

The Role of the Paralegal/ Legal Assistant

CHAPTER OBJECTIVES

Upon completion of this chapter, you will be able to:

- Explain what a legal assistant is.
- Understand the different skills and job duties of a legal assistant.
- Identify the types of employment opportunities available to legal assistants.
- Examine the educational and specialization options available to legal assistants.

Legal assisting is a rapidly growing career opportunity in the United States. That is, legal assisting is not just a job; it's a career. The position of legal assistant is one of the most important positions in a law firm. As you will see from the following discussion, the legal assistant enables the attorney to concentrate on other areas of the law while leaving more routine matters in the hands of a trained professional. Legal assistants also make it possible for lawyers to provide clients with more economical legal services.

DEFINITION

What is a legal assistant? What is a **paralegal**? Both terms are used interchangeably around the country to define essentially the same position in a law firm, as well as the duties and responsibilities associated with that position. A paralegal or legal assistant is sufficiently trained or experienced in the law and legal procedures to assist attorneys in the delivery of legal services to the public or perform legal work as otherwise authorized by law.

The American Bar Association (ABA) is a voluntary national association of attorneys. The ABA plays an active role in developing educational and ethical standards for attorneys and pursuing improvements in the administration of justice. The American Bar Association provides the following definition:

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.

paralegal

A person qualified to assist an attorney, under direct supervision, in all substantive legal matters, with the exception of appearing in court and rendering legal advice.

There are several national organizations that have been formed to promote the benefits of legal assistants and ensure that legal assisting maintains a reputation for being an honorable profession. Each of these organizations has its own definition of a legal assistant. Some of these definitions are provided next.

The National Association of Legal Assistants (NALA), one of the two largest national paralegal associations in the United States, is actively involved in paralegal professional development. It defines a legal assistant as follows: “Legal assistants, also known as paralegals, are a distinguishable group of persons who assist attorneys in the delivery of legal services. Through formal education, training, and experience, legal assistants have knowledge and expertise regarding the legal system and substantive and procedural law which qualify them to do work of a legal nature under the supervision of an attorney.”

The National Federation of Paralegal Associations (NFPA), the other of the two largest national paralegal associations in the United States, provides the following definition: “A paralegal/legal assistant is a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and is customarily, but not exclusively, performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency, or other entity or may be authorized by administrative, statutory, or court authority to perform this work.”

In addition, many areas have local paralegal organizations. These organizations may offer more detailed and specific information regarding employment for paralegals in that area. Students should research their local communities for such organizations. These organizations may serve as excellent sources of networking and job opportunities.

The American Association for Paralegal Education (AAfPE) is a national organization of paralegal educators that was established in 1981 to promote high standards for paralegal education. It also offers a definition of the profession:

Paralegals perform substantive and procedural legal work as authorized by law, which work, in the absence of the paralegal, would be performed by an attorney. Paralegals have knowledge of the law gained through education, or education and work experience, which qualifies them to perform legal work. Paralegals adhere to recognized ethical standards and rules of professional responsibility.

As you can see, paralegals have their own associations. Maintaining a membership in one of these paralegal associations has many benefits, such as the following:

- Meeting and networking with others in your profession.
- Receiving professional publications or accessing online databases that keep you up to date on the latest laws, court cases, and bar association opinions that affect the paralegal profession.
- Participating in meetings to develop policy relating to emerging issues concerning the profession.
- Continuing your training and education through seminars, workshops, and other programs, including online Continuing Legal Education (CLE) programs.
- Depending on the association you join, having access to group insurance plans or other special products and services offered by the association.

There are local and regional paralegal associations as well that can offer information regarding specific local areas and trends.

Legal assistants typically work in a law office under the supervision of an attorney or a paralegal manager. However, there are some legal assistants who work as **freelance or contract legal assistants**. Freelance or contract legal assistants are self-employed as independent contractors. They work for attorneys on a job-by-job basis, market their

freelance/contract

legal assistant

Legal assistant who works as an independent contractor on a job-by-job basis or for a specific period of time but who is still supervised by and reports to an attorney.



EYE ON ETHICS

In California, people cannot call themselves legal assistants or paralegals unless they work under the supervision of and are accountable to an attorney. If they are self-employed and not working under the supervision and direction of an attorney, they are permitted only to fill out legal forms and are strictly forbidden from giving legal advice. Individuals who choose to work in this manner are referred to as **legal document preparers** and not legal assistants. The rule in California is the *majority rule* in the country. In most states, persons cannot refer to themselves as paralegals unless

they work under the direct supervision of a licensed attorney.

In addition, paralegals are prohibited from giving legal advice. The laws of the United States are such that only a licensed attorney may give legal advice. Students should be aware of this rule when friends or family seek free legal advice. For a more detailed presentation of ethics for paralegals, students may view the Model Code of Ethics and Professional Responsibilities and Guidelines at the National Federation of Paralegals Association's Web site.

Legal document preparer

Self employed individual, not working under the supervision of an attorney, that only fills out legal forms and does not offer legal advice or suggestions.

skills, and sell their abilities. They may work at home on assigned projects or offsite, away from the law firm or attorney that employs them. Even though they are independent contractors, freelance legal assistants still work under the supervision of and report to an attorney.



RESEARCH THIS

In California, Section 6450 of the Business and Professions Code sets forth the guidelines for being a paralegal in California. According to the Code, a paralegal is "a person who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California, as defined in Section 6060, or an attorney practicing law in the federal courts of this state, that has been specifically delegated by the attorney to him or

her." California has adopted the qualifications for being a paralegal as NALA set forth in its guidelines. Those who do not possess the necessary education or training and who are not working under the direction and supervision of an attorney cannot call themselves paralegals in California. They can only refer to themselves as "legal document preparers." Using the Internet, research other states that may have similar restrictions on what people can call themselves if they are doing legal tasks without the supervision of an attorney.

JOB DUTIES

A legal assistant is allowed to perform any task that is properly delegated and supervised by an attorney, as long as the attorney is ultimately responsible to the client and assumes complete responsibility for the product of that work.

Many people maintain the misconception that legal assistants spend a great deal of time in court. In fact, legal assistants spend very little time in court. Most work performed by legal assistants is done behind the scenes. According to a survey completed by NALA in 2004, the 10 most common tasks performed by legal assistants on a daily basis are as follows:

- Draft correspondence
- Manage cases

- Oversee calendar deadlines
- Work on computers
- Draft pleadings
- Assist with client contacts
- Attend to office matters
- Conduct general, factual research
- Analyze and summarize documents
- File court documents

The main daily duties of a legal assistant are completed at the office. According to the 2004 NALA survey, 79 percent of legal assistants indicated that they rarely go to court. However, the work of the legal assistant is very important to any case. Many times, the information and research gathered and obtained by the legal assistants is essential to the client's case.

Generally, a legal assistant may perform any function delegated by an attorney (except as otherwise provided by statute, court rule or decision, administrative rule or regulation, or the attorney's *Code of Professional Responsibility*). If an attorney works in litigation, he or she may delegate duties to the legal assistant, who will support those efforts in litigation. Litigation legal assistants can earn a higher salary than other legal assistants because the work is more specialized. Some of the duties that may be performed by a litigation paralegal include, but are not limited to, the following:

- Conduct legal research
- Prepare legal memoranda
- Conduct investigations
- Draft and prepare legal documents
- Analyze legal documents
- Research records
- Attend and assist attorneys at deposition
- Prepare jury instructions
- Prepare deposition summaries
- Prepare trial notebooks and exhibits
- Prepare clients and witnesses for trial
- Maintain and organize the case and trial files
- Develop and maintain litigation support databases
- Coordinate evidence for trial

Life as a litigation legal assistant can be hectic and pressure-packed. Trial calendars are riddled with deadlines, and the volume of work involved in bringing a case to trial can be overwhelming. In addition, trials are stressful, so the attorneys who handle litigation have to deal with the stress of the case, the deadlines, and the client. A good litigation legal assistant will make the life of the trial attorney easier.

Although the working environment for each legal assistant varies, the tasks listed previously are common to almost any legal assistant job. Mastering the skills that enable you to complete the job duties discussed also will enable you to obtain employment as a legal assistant in a variety of settings.



A DAY IN THE LIFE OF A REAL PARALEGAL

Veronica works in a litigation firm. She has worked for her attorney, Tony, for more than six years. Tony has over 30 litigation cases assigned to him, mostly in business litigation. The amount of documentation each case requires is incredible. During their last trial, a conflict over the breach of a multimillion-dollar contract between two big companies, Veronica had to analyze, categorize, file, and enter into the litigation database more than 30,000 pieces of paper.

Every day, there are deadlines. The attorney service picks up from their office daily to file paperwork with the court. Because all the cases involve litigation, something needs to be done on each one almost every day. Veronica does not remember the last time that she worked an eight-hour day. Oftentimes, Veronica arrives at the office around 7:30 a.m. and does not leave until around 7:00 p.m. Because Tony is a trial attorney, he is gone most of the day attending court appearances. Veronica is responsible for conducting legal research, drafting correspondence, preparing legal documentation, and performing other tasks associated with a litigation firm. Tony does not usually arrive back at the office until after 5:00 p.m., and only then does he have time to review the work that Veronica has finished during the day. She stays late so that they can meet when he returns from court. He appreciates her dedication, because she holds down the practice while he is in court.

Tony meets with Veronica at the end of the day, and then, after she goes home, he begins working on the paperwork for each of his cases that he cannot assign to Veronica. Tony dictates his work onto dictation tapes and leaves them for his secretary or sometimes for Veronica to transcribe. Tony works until late in the night to get the job done. When Veronica returns to the office in the morning, she will usually have a pile of work left for her by Tony.

There have been many times that Veronica and Tony have worked 18- to 20-hour days right before a trial to have everything prepared. Being a litigation legal assistant is difficult work, but Veronica likes her job, and she feels that she and Tony are a team and provide quality representation to their clients.

EMPLOYMENT OPPORTUNITIES

The vast majority of legal assistants are found in private law firms, though legal assistants are also employed by banks, insurance companies, corporations, or government offices or are self-employed (freelancers). They may work under the direction of just one attorney or several, have a private office or no office, have secretarial assistance or no support, and travel frequently or never travel.

The average ratio of attorneys to legal assistants is 6:1. That means that for every six attorneys, the firm employs one legal assistant. Remember, this ratio is just an average. Some law firms employ more legal assistants than attorneys because the type of practice, volume of clients, and revenue generation of the firm require more legal assistants than attorneys. Examples of the types of practices that may be legal assistant intensive include litigation, immigration, worker's compensation, and personal injury.

As discussed previously, the duties of the legal assistant vary depending on the size of the law firm. A small law firm tends to employ legal assistants who perform a variety of different tasks related to the operation of the law firm's business. A legal assistant in a small firm has more opportunities to learn many different tasks and take on more responsibilities than does a legal assistant in a larger law firm. Legal assistants may be required to do more administrative and clerical work in a small firm.

Upward mobility may be limited in a small firm, because the firm may offer few positions, if any, to which a person can be promoted. For instance, if a legal assistant is working for a sole practitioner, the firm might consist of only the attorney, the legal assistant, a secretary, and perhaps a receptionist. In this type of situation, there would be no promotion to a higher position because the firm does not have any available.



A DAY IN THE LIFE OF A REAL PARALEGAL

Betsy has five years of experience as a paralegal and just left the firm with which she was employed for those years. Her firm was moving its headquarters to California, but Betsy wanted to stay in New York, because she had many friends and family still living there. Job searching is not Betsy's favorite pastime, but she did everything right as far as getting her foot into the door elsewhere. She circulated her résumé to everyone she knew, answered ads, hired a head hunter and assorted agencies, and exploited her networking contacts. It had only been a month, but still she had gotten no hard leads. Betsy was getting very nervous. One day however, it all changed. She began to hear from many interested employers who were impressed with her experience and skills. In fact, so many people called her back (a good problem to have) that Betsy decided to take her time and not accept any old offer, simply to land a job. She remembered too that she had a side to things and wanted to make sure she chose the correct employer for a smooth entrance and long working career.

In a large firm, the opposite can be true. A legal assistant may be responsible for only one or two areas that are more specialized. A large law firm also may have a hierarchical legal assistant structure, and many more avenues and opportunities for advancement exist in a large firm.

In a corporate environment, a legal assistant could find advancement into other departments or managerial positions inside the corporation. For example, a legal assistant who specializes in employment law can be promoted to a human resource management position. A legal assistant also may serve in the corporate environment as a litigation manager. Litigation management requires the legal assistant to organize and develop strategies for handling numerous lawsuits in different jurisdictions. This responsibility often includes handling discovery documents, organizing motions and briefs, and coordinating with local counsel. A legal assistant with contracts experience may find work as a contracts manager or administrator. Many opportunities exist in the corporate world for people with legal experience, knowledge, and expertise. Some of the various types of jobs that legal assistants can fill in private industry include the following:

- Claims adjuster
- Escrow officer
- Records researcher
- Notary
- Real estate agent

Government agencies also offer opportunities for mobility for legal assistants. Legal assistants can use their knowledge to become court clerks for the local courts. Many IRS auditors, FBI agents, and county clerks have legal experience or backgrounds.

Salaries for legal assistants depend on geography. The larger the metropolitan area, the more money a qualified legal assistant typically can demand. Larger organizations also tend to have better benefits than smaller organizations because they have more resources available to offer such benefits. According to the 2004 National Utilization and Compensation Report conducted by NALA, the average annual salary for a legal assistant was \$46,862 per year. The same report shows that legal assistants who reside in the western United States have an average total compensation of \$55,760, more than any other geographic location. Another major indicator of compensation is the type of firm for which the paralegal works. Typically, larger firms provide more compensation than smaller firms.

Legal assistants are classified as “**non-exempt**” employees. **Exempt** employees are not entitled to overtime pay, whereas non-exempt employees are entitled to one and one-half times their normal rate of pay for any hours they work over 40 hours in one week. A debate has raged for many years about whether legal assistants should fall into the exempt category for professionals, as stated in the **Fair Labor Standards Act**. As late as 2005, the Department of Labor was still of the opinion that legal assistants are non-exempt employees. The Department of Labor, in its *Wage & Hour Opinion Letter*, dated January 7, 2005 (FLSA2005-9), stated that a legal assistant was not exempt from the Fair Labor Standards Act: “[p]aralegals and legal assistants generally do not qualify as exempt learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general, four-year advanced degrees, more specialized paralegal programs are two-year associate degree programs from a community college or equivalent institution.”

This opportunity for overtime pay is an additional benefit enjoyed by legal assistants, especially in a large firm or if the legal assistant is assigned to a large client with ample financial resources that does not mind paying the overtime billed if it furthers its case toward a satisfactory completion. Some legal assistants are also allowed bonus opportunities, another attractive benefit. For more information, visit the United States Department of Labor, Bureau of Labor Statistics, at www.bls.gov/oco/ocos114.htm.

According to a 2002 NALA survey, a legal assistant likely has the following characteristics:

- Is older than 40 years of age.
- Possesses a four-year degree.
- Makes more than \$40,000 per year.
- Works for a small, private law firm.
- Has worked in the industry for between 5 to 12 years.
- Has a bonus opportunity of approximately \$3,000.

EDUCATION AND SPECIALIZATION

Education

Many educational opportunities exist for someone interested in becoming a legal assistant. Below is a discussion of each type of educational opportunity.

Certificate Programs

Many prospective legal assistants chose a certificate program. Depending on the student’s educational background, certificate programs can take up to 18 months to complete. A student who already has a bachelor’s degree can attend a program offered through a college or university. Normally, this type of program takes one year to finish. The certificate awarded to the student who successfully completes this type of program is referred to as a post-degree certificate.

Another option is to attend a certificate program offered by a private, for-profit business school, trade school, or college. Typically, this type of program requires a high school diploma for admission. The length of time to complete such a program ranges from three to eighteen months. After the program is completed, the student receives a legal assistant certificate or diploma.

It is not necessary to have a two- or four-year degree to obtain entry-level employment as a legal assistant. However, you must have at least a diploma or certificate

non-exempt

An employee who is required to be paid overtime wages if he or she works more than 40 hours in one week.

exempt

An employee who is not paid overtime if he or she works more than 40 hours in one week.

Fair Labor Standards Act

A federal law that sets forth the minimum wage and overtime pay requirements for employees.

from some type of regionally or nationally accredited educational institution. Keep in mind that, generally speaking, a person who has graduated from a diploma program will make less money than a person who possesses a college degree.

Degree Programs

associate's degree

An academic degree awarded by community colleges, junior colleges, business colleges, and some bachelor's degree-granting colleges and universities upon completion of a course of study, usually lasting two years.

bachelor's degree

Degree awarded by a college or university to a person who has completed undergraduate studies, usually lasting four years.

Degree options include an **associate's degree** or a **bachelor's degree**. An associate's degree, which students normally obtain from a community college, requires the completion of approximately 60 semester hours. The degree requirements typically are split evenly between general education courses and law courses. A bachelor's degree requires the completion of about 120 semester hours, 50–60 of which are spent in general education courses, and the remainder are courses from the major area, such as legal assistant studies. Some programs allow for a selection of a minor field.

Legal assistants who have a four-year degree generally command higher salaries than those who do not. In 2002, NALA reported that more than 47 percent of all legal assistants surveyed possessed a four-year degree. Due to the prestige of the industry, many large law firms will not consider a candidate for employment as a legal assistant who does not possess a four-year degree. The trend in the industry is to hire persons who have four-year degrees.

Master's Degree

Degree programs at this level include a Master's degree in business administration or an *LLM (masters in law)* in law. Most of these degrees require a bachelor's degree before entering the program and take approximately three to four years to complete (not including the time required to complete the bachelor's degree). These programs are considered advanced degrees. Many law students who could not pass the bar examination become paralegals or take paralegal positions while studying for the bar.

Most paralegal programs consist of courses both in substantive law and procedural law. Substantive law includes all laws that define, describe, regulate, and create legal rights and obligations. Procedural law establishes methods of enforcing the rights established by substantive law.

Certification

In the United States, there is no such thing as a licensed paralegal; however, paralegals can be certified. Certification is voluntary in most states, increases a paralegal's skill sets or prepares him or her to enter the profession, often increases the likelihood of a paralegal's hire or promotion, and serves to identify a person as capable of work that is on par with certain standards. Certification is typically accomplished by taking and passing one of several privately administered tests from a paralegal association.

Certification involves recognition by a private professional group or state agency that a candidate has met specified standards of proficiency. A legal assistant certificate means that the person has successfully completed a course of legal assistant studies. In addition, a certified legal assistant is a person who has demonstrated his or her knowledge and competence in the field by taking and passing an examination administered by a private professional group or state agency.

Certification is a voluntary process. The **Certified Legal Assistant Exam (CLA)**, developed by NALA, consists of a two-day exam based on federal laws and procedures. The major subject areas covered by the examination are as follows:

- Legal research
- Ethics
- Legal terminology

Certified Legal Assistant Exam (CLA)

Two-day comprehensive examination based on federal law and procedure.

- Communications
- Human relations
- Judgment and analytical ability
- Substantive law, which can cover some of the following areas:
 - The American legal system
 - Administrative law
 - Bankruptcy
 - Business organizations/corporations
 - Contracts
 - Family law
 - Criminal law and procedure
 - Litigation
 - Probate and estate planning
 - Real estate

To be eligible to sit for the certification examination, a legal assistant must meet one of the following requirements:

- Graduate from a legal assistant program that is:
 - Approved by the American Bar Association;
 - An associate degree program;
 - A post-baccalaureate certificate program in legal assistant studies;
 - A bachelor's degree program in paralegal studies; or
 - A paralegal program that consists of a minimum of 60 semester hours, of which at least 15 semester hours are substantive legal courses.
- Hold a bachelor's degree in any field plus one year's experience as a legal assistant. Successful completion of at least 15 semester hours of substantive legal assistant courses is considered equivalent to one year's experience as a legal assistant.
- Have a high school diploma or equivalent plus seven years' experience as a legal assistant under the supervision of a member of the Bar, plus evidence of a minimum of 20 hours of continuing legal education credit to have been completed within a two-year period prior to the examination date.

After legal assistants have successfully passed the CLA, they can designate themselves as certified legal assistants by placing the acronym "CLA" behind their names. The CLA is good for five years. To maintain CLA certification, a legal assistant must complete a minimum of 50 hours of continuing education. Certification can lead to higher pay for those legal assistants who successfully pass the examination.

Various programs are certified by the American Bar Association (ABA). These programs typically include a higher curriculum standard than non-ABA certified programs. Attorneys are often aware of this certification, and it may be in students' best interest to consider this advantage when choosing a program of study.

Specialization

Legal assistants can specialize in some of the same areas as do attorneys. Some take certification examinations in a particular area, and others become specialized in a particular area because of their on the job training. The area of specialization that has the largest number of legal assistants is litigation. Specialization can increase the salary opportunities for legal assistants. Figure 4.1 lists the areas of specialization that the NFPA has recognized as available for legal assistants.

FIGURE 4.1
Areas of
Specialization
Recognized by NFPA

Alternative Dispute Resolution	Finance and Securities
Admiralty	General law
Animal law	Governmental
Antitrust	Health and elder law
Appellate law	Immigration
Arbitration	Insurance law
Automated litigation	Intellectual property
Automotive	International law
Aviation	Litigation
Banking/finance	Medical malpractice
Bankruptcy	Mergers and acquisition
Business law	Municipal law
Collections	Native American law
Commercial law	Personal injury
Construction defect	Plaintiff litigation
Contract law	Preventative law
Corporate law	Products liability
Consumer law	Public benefits
Criminal law	Real estate
Cyberspace law	Scientific/technical
Defense litigation	Securities
Education law	Social security
Employment/labor law	Tax
Entertainment law	Telecommunications law
Environmental law	Transactions
Estates, wills, and trusts	Uniform Commercial Code
Family law	Workers compensation



SURF'S UP

Using the Internet, go to the Web site for the NALA, www.nala.org, and review the requirements for legal assistant certification. Look at the publications available through

NALA to assist students in preparation for the CLA. Review the areas of specialization and determine if some areas have their own certification examinations.

Summary

A paralegal or legal assistant is a person sufficiently trained or experienced in the law and legal procedures to assist attorneys in the delivery of legal services to the public or perform legal work, as otherwise authorized by law.

Legal assistants typically work under the supervision of an attorney. They conduct legal work in a legal office and report to a paralegal manager or attorney. However, there are some legal assistants who work as freelance or contract legal assistants. Freelance or contract legal assistants are self-employed as independent contractors. They work for attorneys on a job-by-job basis. They market their skills and sell their abilities.

A legal assistant may perform any task that is properly delegated and supervised by an attorney, as long as the attorney is ultimately responsible to the client and assumes complete responsibility for the work product. Generally, and except as otherwise provided by statute, court rule or decision, administrative rule or regulation, or the attorney's *Code of Professional Responsibility*, a legal assistant may perform any function delegated by an attorney.

The vast majority of legal assistants work in private law firms, though legal assistants are also employed by banks, insurance companies, corporations, and government offices or may be self-employed (freelance). They may work under the direction of

just one attorney or several, have a private office or no office, have secretarial assistance or no support, and travel frequently or never travel.

Legal assistants are classified as non-exempt employees and entitled to time-and-a-half pay for any hours they work over 40 hours in one week.

Many prospective legal assistants chose a certificate program. Depending on the student's educational background, certificate programs can take up to 18 months to complete. A student who already has a bachelor's degree can attend a program offered through a college or university, which normally takes one year to finish. The certificate awarded to the student who successfully completes this type of program is referred to as a post-degree certificate.

Degree options include an associate's degree or a bachelor's degree. The associate's degree, which normally is obtained from a community college, requires the completion of approximately 60 semester hours, typically split evenly between general education courses and law courses. A bachelor's degree requires the completion of about 120 semester hours. Approximately 50–60 of these hours are spent in general education courses.

Certification involves recognition by a private professional group or state agency that the candidate has met specified standards of proficiency. A legal assistant certificate means that the person successfully completed a course of legal assistant studies. A certified legal assistant also has demonstrated his or her knowledge and competence in the field by taking and passing an examination administered by a private professional group or state agency.

Legal assistants can specialize in some of the same areas as do attorneys. Some take certification examinations in a particular area, and others become specialized in a particular area through their experience on the job. The area of specialization with the largest number of legal assistants is litigation. Specialization can increase the salary opportunities for legal assistants.

Associate's degree

Bachelor's degree

Certified Legal Assistant Exam (CLA)

Exempt

Fair Labor Standards Act

Freelance/contract legal assistant

Legal document preparer

Non-exempt

Paralegal

Key Terms

1. What is the biggest area of specialization for legal assistants?
2. What are the education options for persons entering the legal assistant field?
3. Is a four-year degree required to obtain a job as a legal assistant? Why or why not?
4. Are opportunities for two-year degree graduates and four-year degree graduates different?
5. What is a contract legal assistant?
6. What is a freelance legal assistant?
7. What is the difference between an exempt and a non-exempt employee?
8. Why are legal assistants considered non-exempt employees?
9. To become a certified legal assistant, what are the minimum requirements?
10. What type of law practice employs the greatest number of legal assistants?
11. List the 10 most common daily duties of a legal assistant.
12. List 10 areas of specialization for legal assistants.
13. For what does the acronym NALA stand?

Review Questions

Exercises

1. Access www.salary.com and find the average salary and benefits for each of the following groups:
 - a. 0–2 years experience
 - b. 3–5 years experience
 - c. 5–8 years experience
 - d. More than 8 years experience
2. Access the NALA Web site and find the average salary and benefits information provided by NALA for the same groups delineated in Question 1. Make a chart to depict the differences between the two sources.
3. Check the local papers, Internet, and other sources for employment information. Locate 10 classified advertisements for legal assistants. What is the average number of years of experience required for employment? What is the minimum educational requirement? What is the average educational requirement?
4. What other search terms may be used, in addition to paralegal and legal assistant, to locate job opportunities?
5. Research when paralegal and legal assistant career paths began in the United States. List some market reasons for why those careers took off so quickly, without any slowdown predicted for the next 15 years, according to the Department of Labor.
6. Have paralegals and legal assistants taken jobs away from legal secretaries? Please give a full explanation of your response.

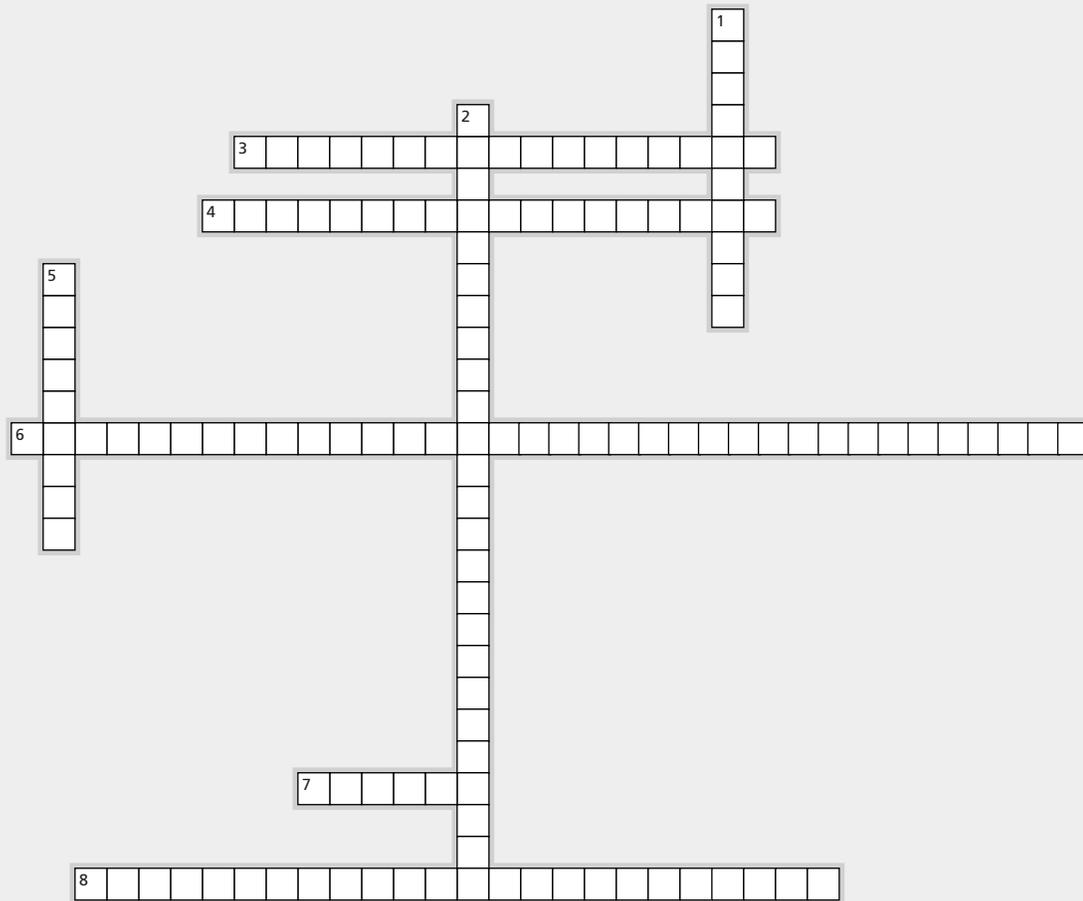


PORTFOLIO ASSIGNMENT

Research any other country that practices a common law system like the United States and England. Do those countries/jurisdictions employ paralegals and legal assistants in positions that are similar in nature and scope?



Vocabulary Builders



Instructions

Use the key terms from this chapter to fill in the answers to the crossword puzzle.

NOTE: When the answer is more than one word, leave a blank space between the words.

ACROSS

2. Degree awarded by a college or university to a person who has completed undergraduate studies, usually lasting four years.
4. An academic degree awarded by community colleges, junior colleges, business colleges, and some bachelor's degree-granting colleges and universities upon completion of a course of study usually lasting two years.
6. Two-day comprehensive examination based on federal law and procedure. Subjects tested are: administrative law, bankruptcy, business organizations corporations, contracts, family law, criminal law and procedure, litigation, probate and estate planning, real estate.
7. An employee who is not paid overtime if he or she works more than 40 hours in one week.
8. A federal law that sets forth the minimum wage and overtime pay requirements for employees.

DOWN

1. An employee is required to be paid overtime wages if he or she works more than 40 hours in one week.
2. Legal assistant who works as an independent contractor on a job-by-job basis or for a specific period of time but who is still supervised by and reports to an attorney.
3. A person qualified to assist an attorney, under direct supervision, in all substantive legal matters with the exception of appearing in court and rendering legal advice.



CASE IN POINT

IN RE: CHARLES WILLIAMS
No. 2002-B-2698
SUPREME COURT OF LOUISIANA
April 9, 2003, Decided

SUBSEQUENT HISTORY: Released for Publication April 23, 2003.

PRIOR HISTORY: *Louisiana State Bar Assn. v. Williams*, 498 So. 2d 727, 1986 La. LEXIS 7830 (La., 1986)

DISPOSITION: Respondent law practice suspended.

CASE SUMMARY

PROCEDURAL POSTURE: Respondent disbarred attorney attended depositions and held himself out as an attorney. One count of formal charges was filed against him by the Office of Disciplinary Counsel (ODC) (Louisiana) for the illegal practice of law. The attorney argued that there was an "overlap" between the roles of attorneys and paralegals. The attorney disciplinary board recommended that the attorney be suspended for one year and one day and be assessed costs.

OVERVIEW: The evidence showed the attorney engaged in the unauthorized practice of law in connection with his participation in the depositions of two clients. In both matters, the attorney implied he was authorized to practice law and did not inform the court reporter or opposing counsel that he was suspended from practice. Moreover, in both matters, the attorney acted as an attorney by asking questions of the persons being deposed. The attorney claimed that opposing counsel attempted to ridicule him by asking if he was an attorney. In general, when an attorney has manifested a conscious intent to flout the authority of the Supreme Court of Louisiana by practicing after having been prohibited from doing so, the court has not hesitated to impose disbarment. However, not all instances of the unauthorized practice of law warranted the most severe sanction. The instant case fell somewhere between the two extremes. There was no indication from the record that the attorney consciously attempted to practice law in blatant disregard of the orders of the court; on the other hand, it appeared that his actions were more deliberate and far-reaching than the actions of the attorney in *Ellis*.

OUTCOME: The attorney was suspended from the practice of law in Louisiana for a period of two years. All but one year and one day of that suspension was deferred. If and when that attorney applied for reinstatement to the practice of law, he was to have satisfied all conditions set forth by the supreme court. All costs and expenses in the matter were assessed against the attorney.

OPINION: ATTORNEY DISCIPLINARY PROCEEDINGS

DISCIPLINARY PROCEEDINGS

This disciplinary matter arises from one count of formal charges filed by the Office of Disciplinary Counsel ("ODC") against respondent, Charles Williams. We previously suspended

respondent from practice for a minimum term of two years. *Louisiana State Bar Ass'n v. Williams*, 498 So. 2d 727 (La. 1986) ("*Williams I*"). Our judgment in *Williams I* provided that respondent could petition for and obtain reinstatement at the end of the two-year period, provided that he had fulfilled certain conditions; however, if respondent had not fulfilled all of the specified conditions, "his suspension from the practice of law shall continue indefinitely." 498 So. 2d at 730. To date, respondent has not complied with the conditions set forth in *Williams I*, and accordingly, he remains suspended from the practice of law.

UNDERLYING FACTS

On April 8, 1998, while employed as a paralegal by the Law Office of Louis A. Gerdes, Jr., respondent accompanied two of the firm's clients to sworn statements taken by counsel for the insurance company in a personal injury claim. Respondent actively participated in the sworn statements, indicated that he is an attorney, and advised the clients how to answer questions asked of them.

In addition, during the course of the ODC's investigation of this matter, respondent was requested on several occasions to schedule a meeting with the ODC. Respondent did so, but he failed to appear on any occasion, including a meeting for which he had been ordered to appear pursuant to a subpoena.

On December 28, 1999, the ODC filed one count of formal charges against respondent, alleging that his conduct violated the following provisions of the Rules of Professional Conduct: Rules 5.5(a) (engaging in the unauthorized practice of law), 8.1(c) (failure to cooperate with the ODC in its investigation), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(g) (failure to cooperate with the ODC in its investigation).

Attempts by the ODC to serve respondent with the formal charges were initially unsuccessful. Following this court's appointment of a curator to facilitate service, respondent was personally served with the formal charges on April 10, 2001. Respondent answered the charges and essentially denied any misconduct. Specifically, respondent stated he has not "done anymore depositions nor do I intend to do any more depositions, since counsel for the other party seemingly tried to get me to admit, I was a lawyer, by trickery." Respondent also denied that he failed to cooperate with the ODC, pointing out that he had recently been living out of state but that "Mr. Gerdes knew how to contact me."

Hearing Committee Recommendation

This matter proceeded to a formal hearing on the merits on June 18, 2001. At the hearing, respondent admitted the misconduct charged in the formal charges. He also consented to the introduction of the ODC's documentary evidence, including the transcripts of the two sworn statements respondent

attended and participated in on behalf of clients of Mr. Gerdes. The transcripts reveal that on April 8, 1998, respondent accompanied Ms. Raashand Frazier to a sworn statement taken by William Stephens, counsel for GEICO Insurance Company, in connection with a personal injury claim. At the beginning of the statement, the following colloquy took place on the record:

By Mr. Stephens: Good afternoon. My name is Bill Stephens, and I represent GEICO Insurance Company. Before we get started, we're just going to get a couple [of] prerequisites done. First of all, just for the record, I'd like to know who is appearing.

By Mr. Williams: Charles Williams, standing in for Louis Gerdes.

By Mr. Stephens: Mr. Williams, you are an attorney?

By Mr. Williams: Yeah.

Respondent went on to actively participate in the statement, including advising Ms. Frazier how to answer several questions asked of her by Mr. Stephens.

On the same day and in connection with the same personal injury claim, Ms. Frazier's mother, Sandra Frazier, also gave a sworn statement. Respondent did not correct Mr. Stephens when he stated on the record that respondent "is acting as [Mrs. Frazier's] attorney in this particular matter." Furthermore, as respondent had done during the statement given by Ms. Frazier, he advised Mrs. Frazier how to answer several questions asked of her by Mr. Stephens.

Before the hearing committee, respondent testified that Mr. Gerdes frequently asked him to "cover" depositions, and he claimed he was present at the two Frazier sworn statements as Mr. Gerdes' "agent." Respondent suggested that he remained silent throughout most of the proceeding, and claimed that when he did speak, he did not violate the Rules of Professional Conduct or this court's rule relating to "paralegals and their participation in depositions" because he did not offer "specific legal advice." Respondent also claimed that he did not accept any money from these clients under the false pretense that he is a practicing lawyer. When asked specifically about his affirmative response in Ms. Frazier's statement to the question, "Are you an attorney?," respondent admitted that he should have responded in such a manner to make it clear that he is not a *practicing* attorney; however, respondent maintained that he is, in fact, an attorney because he graduated from law school and passed the bar examination. Respondent testified that he thought opposing counsel was making fun of him and was trying to belittle him by asking whether he is an attorney.

Following respondent's admission to the formal charges, the hearing was converted to a hearing in mitigation. The only mitigating evidence offered by respondent at the hearing was his testimony that his wife died in December 1996 after a long battle with breast cancer. In a post-hearing memorandum, respondent suggested he had other personal problems that should be considered in mitigation, including a 1987 automobile accident that killed his half-sister and caused his brother to suffer severe brain damage, and the 1993 and 1994 deaths of two brothers-in-law.

After considering the record, the committee found the factual allegations contained in the formal charges were proven by clear and convincing evidence, and that respondent violated the professional rules as charged. The committee found that

respondent violated duties owed primarily to the profession and to clients. Rejecting respondent's contention that there is an "overlap" between the roles of attorneys and paralegals, the committee concluded respondent's conduct and his representations that he is an attorney were willful and knowing. The committee noted that this court has routinely imposed suspension as the minimum sanction in cases in which an attorney has engaged in the practice of law while ineligible to practice for any reason.

In aggravation, the committee noted respondent's prior disciplinary record, as well as a pattern of misconduct and multiple offenses. The committee recognized that mitigating factors may exist in the form of the personal problems cited by respondent, but it ultimately gave no consideration to these circumstances because they are too remote in time to the offenses committed by respondent in 1998. In light of the substantial aggravating factors present, and considering the absence of mitigating factors, the committee concluded there is no reason to impose a sanction in this case less than the one year and one day suspension ordered in *In re: Brough*, 98-0366 (La. 4/3/98), 709 So. 2d 210.

Based on this reasoning, the committee recommended that respondent be suspended from the practice of law for one year and one day. The committee further [Pg 6] recommended that this period of suspension commence to run after respondent has satisfied the conditions of the two-year suspension imposed in *Williams I*.

The ODC filed an objection to the leniency of the sanction recommended by the hearing committee.

Disciplinary Board Recommendation

The disciplinary board generally agreed with the hearing committee's factual findings and its application of the Rules of Professional Conduct. The board found that respondent has violated duties owed to the profession and to clients. The board noted that respondent's conduct was knowing and caused injury to the clients of the Gerdes firm. The board agreed with the hearing committee's finding that no mitigating factors exist; however, the board did not agree with the committee's assessment of the aggravating factors. The board found the following aggravating factors are supported by the record: prior disciplinary offenses, multiple offenses, bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency, and substantial experience in the practice of law (admitted 1977).

Turning to the issue of an appropriate sanction, the board agreed that the baseline for respondent's misconduct is a suspension under Standard 7.2 of the ABA's *Standards for Imposing Lawyer Sanctions*. The board noted the relevant jurisprudence, including the *Brough*, *Withers*, and *Ellis* cases cited by the hearing committee, also supports a suspension. Because respondent's misconduct in this matter involves two instances of the unauthorized practice of law, as well as misrepresentation and failure to cooperate with the ODC, and considering the [Pg 7] aggravating factors present, the board determined that the more stringent sanction of *Brough*—a one year and one day suspension from the practice of law—is warranted here.

Accordingly, the board recommended that respondent be suspended for one year and one day. The board further recommended that this period of suspension commence to run upon the finality of this court's judgment. Finally, the board

recommended that respondent be assessed with all costs and expenses of these proceedings, with legal interest to commence running thirty days from the date of finality of the court's judgment until paid.

Neither respondent nor the ODC filed an objection in this court to the disciplinary board's recommendation; however, pursuant to Supreme Court Rule XIX, § 11(G)(1)(a), we ordered the parties to submit written briefs addressing the appropriateness of the proposed sanction.

DISCUSSION

Bar disciplinary matters come within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Quaid*, 94-1316 (La. 11/30/94), 646 So. 2d 343; *Louisiana State Bar Ass'n v. Boutall*, 597 So. 2d 444 (La. 1992). While we are not bound in any way by the findings and recommendations of the hearing committee and disciplinary board, we have held the manifest error standard is applicable to the committee's factual findings. *See In re: Caulfield*, 96-1401 (La. 11/25/96), 683 So. 2d 714; *In re: Pardue*, 93-2865 (La. 3/11/94), 633 So. 2d 150.

The evidence in the record demonstrates respondent engaged in the unauthorized practice of law in connection with his participation in the sworn statements of Ms. Raashand Frazier and Mrs. Sandra Frazier. In both matters, respondent implied he was authorized to practice law, and at no time informed the court reporter or the opposing counsel that he was suspended from practice. Moreover, in both matters, respondent acted as an attorney by asking questions of the persons being deposed.

Having found professional violations, we now turn to a determination of the appropriate sanction for this misconduct. In determining an appropriate sanction, we are mindful that disciplinary proceedings are designed to maintain high standards of conduct, protect the public, preserve the integrity of the profession, and deter future misconduct. *Louisiana State Bar Ass'n v. Reis*, 513 So. 2d 1173 (La. 1987). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved, considered in light of any aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Whittington*, 459 So. 2d 520 (La. 1984).

The unauthorized practice of law by a suspended or disbarred attorney is very serious misconduct. Our legislature has made it a felony to engage in such conduct. La. R.S. 37:213. Likewise, we have listed unauthorized practice of law by a suspended or disbarred attorney as a possible ground for permanent disbarment under the Guidelines Depicting Conduct Which Might Warrant Permanent Disbarment contained in Appendix E to Supreme Court Rule XIX.

In general, when the attorney has manifested a conscious intent to flout the authority of this court by practicing after being prohibited from doing so, we have not hesitated to impose disbarment. *See, e.g., In re: Jones*, 99-1036 (La. 10/19/99), 747 So. 2d 1081 (attorney disbarred for engaging in the unauthorized practice of law on four occasions, after being suspended in the past for similar misconduct). However, not all instances of the unauthorized practice of law warrant the most severe sanction. For example, in *In re: Ellis*, 99-2483 (La. 9/15/99), 742 So. 2d 869, we imposed a ninety-day suspension on a previously suspended attorney who failed to remove the "attorney at law" designation from his office. *See also In re: Withers*, 99-2951 (La. 11/19/99), 747 So. 2d 514 (attorney suspended for six months, followed by an eighteen-month period of probation, for representing a client while ineligible to do so).

The instant case falls somewhere between those two extremes. There is no indication from the record that respondent consciously attempted to practice law in blatant disregard of the orders of the court; on the other hand, it appears respondent's actions were more deliberate and far-reaching than the actions of the respondent in *Ellis*.

Under these circumstances, we find the appropriate baseline sanction is a two-year period of suspension. However, in mitigation, we conclude that respondent lacked a dishonest or selfish motive, in that he received no benefit from his appearance at the two sworn statements. Accordingly, we will defer all but one year and one day of the suspension. If and when respondent applies for reinstatement to the practice of law, he shall satisfy all conditions set forth by this court in *Williams I*. If reinstatement is granted, respondent shall be placed on supervised probation for a period of one year.

DECREE

Upon review of the findings and recommendation of the hearing committee and disciplinary board, and considering the record, it is ordered that Charles Williams be suspended from the practice of law in Louisiana for a period of two years. It is further ordered that all but one year and one day of this suspension shall be deferred. If and when respondent applies for reinstatement to the practice of law, he shall satisfy all conditions set forth by this court in *Louisiana State Bar Ass'n v. Williams*, 498 So. 2d 727 (La. 1986). If reinstatement is granted, respondent shall be placed on supervised probation for a period of one year. Any misconduct during that time will be grounds for making the deferred portion of the suspension executory. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

[Footnotes omitted]

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