



PARALEGAL GUIDE

The Young Lawyers' Guide To Working With A
Paralegal: Tips On Creating A Symbiotic Relationship

Produced and distributed as a public service by
the Texas Young Lawyers Association and the State Bar of Texas

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I. INTRODUCTION

a. This Guide Is For You

The Texas Young Lawyers Association and the Paralegal Division of the State Bar of Texas have collaborated to guide young lawyers on working effectively with a paralegal. We hope that paralegals may also find this guide useful.

b. Authority

As attorneys we like to know the authority supporting every opinion or statement we read. Accordingly, you can rest assured that the opinions set forth in this guide come from credible sources, including members of the Texas Young Lawyers Association Board of Directors in consultation with the Paralegal Division of the State Bar of Texas.¹ In addition, several citations are made to the State Bar of Texas, the American Bar Association, and to the *Texas Disciplinary Rules of Professional Conduct*.

¹ The State Bar of Texas was the first state bar in the U.S. to create a “division” for paralegals. See txpd.org. The State Bar defined “paralegal” and adopted Texas Paralegal Standards in 2006 as to the education, training, and work experience a paralegal should possess to be titled a “paralegal.” See <https://txpd.org/about-pages/texas-paralegal-definition-and-standards/>

II. GENERAL ADVICE FOR WORKING WITH A PARALEGAL

The relationship between an attorney and a paralegal is crucial to say the least. The paralegal and attorney, as well as other assistants, form a team, and if the teammates don't get along or work symbiotically, the team will never reach its full potential. Therefore, it is important that the team work *together* and respect each other.

In some firms, frequently in small or solo firms, one individual may perform both paralegal and assistant work in a "hybrid" role. In other environments, there are distinct roles for paralegals, administrative assistants, and case clerks.

a. R-E-S-P-E-C-T

Texas Young Lawyer Association board members were asked what the most important thing a young lawyer should keep in mind when working with a paralegal. The most common answer? You guessed it, respect.

b. Communicate, Communicate, Communicate

One of the criticisms paralegals have with attorneys is that they may not communicate well. However, this skill can be developed and it begins with inclusiveness between the attorney, paralegal, and overall team. All it takes is time and effort.

Start by setting up periodic meetings with the paralegal to go over the past, present, and future work. These meetings will give you an opportunity to delegate future tasks and review the work performed. Don't forget to listen in these meetings as well, as a paralegal may have processes and efficiencies to offer.

Limit "last minute" or "emergency" tasks as much as possible. We all know tasks or projects will come up that will require immediate action, but it's not sound practice to consistently operate at this level.

Remember to copy (or bcc) the paralegal (and/or assistant) on emails so they stay informed. Keeping your team informed lends to efficiencies and better client service. Paralegals and case assistants can also assist you in preserving and commemorating your case/client file.

c. Create a Team Atmosphere

The most productive attorney-paralegal relationships operate as a team. Involve paralegals in new cases from the beginning. Give the paralegal every bit of information you can about the case so they may be as invested as you. Having knowledge and information both helps the paralegal provide a better work product to the attorney, as well as saves the attorney time in explaining the background of a matter.

To be a team, all members must feel part of one. As such, include paralegals in continuing legal education lunches and professional activities.

III. WHAT CAN YOU EXPECT PARALEGALS TO DO?

The American Bar Association's Standing Committee on Paralegals developed *ABA Model Guidelines for the Utilization of Paralegal Services*.² The State Bar of Texas developed similar guidelines.

A paralegal must operate under the supervision of the lawyer, and the attorney is professionally responsible for all work done for the client. This is particularly important with today's technology and electronic filings. An attorney may delegate any tasks to a paralegal that the attorney may lawfully do, *except* for the items listed in IV below.

The Texas Paralegal Standards provide examples of the "Delegation of Substantive Legal Work" as including but not limited to:

² https://www.americanbar.org/content/dam/aba/administrative/paralegals/ls_prlgs_modelguidelines.pdf

- Conducting client interviews and maintaining general contact with the client;
- Locating and interviewing witnesses;
- Conducting investigations and statistical and documentary research;
- Drafting documents, correspondence, and pleadings;
- Summarizing depositions, interrogatories, and testimony; and
- Attending executions of wills, real estate closings, depositions, court or administrative hearings, and trials with an attorney.

“Substantive legal work” does not include clerical or administrative work. Accordingly, a court may refuse to provide recovery of paralegal time for such non-substantive work.³

Additionally, below is a list of tasks that TYLA board members report they commonly ask paralegals to complete:

- Pulling or printing cases
- Cite checking cases
- Working in document databases
- Drafting routine pleadings
- Preparing witness kits
- Preparing and filing court filings
- Preparing binders for attorneys (key documents/key pleadings/etc.)
- Doing background research on parties and witnesses
- Preparing legal spreadsheets
- Managing the calendar
- Drafting and responding to routine discovery
- Drafting shells of motions and other pleadings
- Communicating with clients and opposing counsel regarding routine issues
- Drafting estate planning documents
- Drafting corporate formation documents

³ *Gill Sav. Ass'n v. Int'l Supply Co., Inc.*, 759 S.W.2d 697, 705 (Tex. App. Dallas 1988, writ denied).

IV. WHAT SHOULD YOU NOT EXPECT PARALEGALS TO DO?

a. Texas Disciplinary Rules of Professional Conduct

Before we address what paralegals should not be expected to do, it is important to understand a lawyer's obligations under the Texas Disciplinary Rules of Professional Conduct as they relate to working with paralegals.

i. Rule 5.03: Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(b) a lawyer shall be subject to discipline for the conduct of such person that would be in violation these rules if engaged in by a lawyer if:

(1) the lawyer orders, encourages, or permits the conduct involved; or

(2) the lawyer:

(i) is partner in the law firm in which the person is employed, retained by, or associated with; or is the general counsel of a government agency's legal department in which the person is employed, retained by or associated with; or has direct supervisory authority over such person; and

(ii) with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that person's misconduct.

This means that under these rules, a lawyer should give paralegals appropriate instruction and supervision regarding the ethical aspects of their employment. This includes, but is not limited to, maintaining confidentiality, preventing conflicts of interest, ensuring honest billing and

time tracking, avoiding fee splitting, avoiding conversations with jurors until the trial is over, avoiding *ex parte* communication with judges, dealing with opposing counsel in a professional manner, and maintaining high standards of professionalism at all times.

You should ensure that paralegals working for you or your firm are aware of the Texas Disciplinary Rules of Professional Conduct. A lawyer is responsible for a paralegal's work product, so consider the level of education, training, and experience of the paralegal when assessing how much supervision is needed.

ii. *Rule 5.05: Unauthorized Practice of Law.*

A lawyer shall not:

(a) Practice law in a jurisdiction where doing so violates the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Rule 5.05(b) does not mean that the use of paralegals is prohibited but rather that you must supervise the delegated work; retain responsibility for the work, as this responsibility may never be delegated; and maintain a direct relationship with the client. It is your responsibility to ensure that a paralegal working for you or your firm does not engage in the unauthorized practice of law.

iii. *Rule 1.01. Competent and Diligent Representation*

In 2019, Rule 1.01 of the Texas Disciplinary Rules of Professional Conduct was amended to include technology competency. This is an area where attorneys and paralegals can work together to ensure compliance.

Maintaining Competence

8. Because of the vital role of lawyers in the legal process, each lawyer should strive to become and remain proficient and competent in the practice of law, including the benefits and risks associated with relevant technology. To

maintain the requisite knowledge and skill of a competent practitioner, a lawyer should engage in continuing study and education. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances. Isolated instances of faulty conduct or decision should be identified for purposes of additional study or instruction.

b. What cannot be delegated to a paralegal⁴

- i. Responsibility for establishing an attorney-client relationship.
- ii. Responsibility for establishing the amount of fee to be charged for a legal service.
- iii. Responsibility for a legal opinion rendered to a client. A paralegal may communicate legal advice from an attorney, but they cannot expand upon this advice. In determining whether a paralegal is giving legal advice, the paralegal should ask three questions before answering: (1) Does the answer require the paralegal to utilize legal knowledge or judgment? (2) Does the answer concern the client's legal rights or responsibilities? (3) Will the client take some action because of the answer? If the answer is yes to any of these questions, the paralegal cannot answer the question, even if they know the answer. It is important to advise a paralegal regarding these questions and to inform them regarding what is considered giving legal advice.
- iv. Responsibility for work product. Since the responsibility for work product cannot be delegated, ultimately all the work product rests with you and all documents should be carefully reviewed before they are circulated.
- v. Responsibility to maintain a direct attorney-client relationship. A paralegal's accountability is to you, not to the client. Paralegals may be utilized in communicating with the client, but it is not their responsibility to maintain the relationship. When communicating with clients the paralegal should make the client aware of their job title and that they cannot answer

⁴ See Paralegal Ethics Handbook, www.txpd.org/ethics-pages/paralegal-ethics-handbook

legal questions. A paralegal can serve as a good asset in client communications, and may communicate information from the attorney, but should not be put in a position to explain processes or matters that could border on giving legal advice and would be better explained by the attorney. Additionally, while a paralegal may obtain initial information from a potential client, the attorney should hold the initial client meeting, not the paralegal. It is helpful to have the paralegal involved in the initial client meeting (e.g. to take notes and follow up on items needed) but they should not be the only one meeting with the client.

vi. The signing of legal pleadings. Paralegals may not sign pleadings. An “/s/” signature on a pleading indicates the attorney has read the pleading (or motion), pursuant to Texas Rules of Civil Procedure 13. An email from the attorney to the paralegal (or assistant) with the document to be filed is a good way for the attorney to direct the application of his or her electronic signature to a document to be filed. Some attorneys also keep a physically signed copy in their files.

vii. The negotiation of settlement agreements.

viii. Solicitation of legal business.

ix. Advertising or contracting with members of the public for the performance of legal services.

x. Representing a client in court. Although in certain instances a paralegal may appear before a court or agency on administrative matters, they may not represent a client.

V. WHAT CAN YOU DO TO HAVE THE OPTIMUM PARALEGAL-ATTORNEY RELATIONSHIP?

Paralegals can be your greatest allies. Often a paralegal has been at the job much longer than you have been a lawyer, and the advice they offer can be invaluable. The paralegals the TYLA Board interviewed gave the following advice:

- a.* **Have patience.** It is important that you consider the tasks assigned to the paralegal.
- b.* **Be consistent.** Do not continuously change the instructions on a task. Be sure to give clear instructions and stick with those instructions. As one TYLA member states: “Bad work product is often the result of bad instructions.”
- c.* **Be organized.** Nothing can frustrate a paralegal more than waiting until the last minute to request a task. Rushing an assignment increases the chance that mistakes will be made. However, being organized does not mean that you must micromanage a paralegal’s work.
- d.* **Make your expectations clear.** It is important from the beginning of working with a paralegal that you set forth your expectations. Be clear as to what you expect regarding the work product and be open to the paralegal asking clarifying questions. Paralegals find it very helpful when attorneys include what end result they want to achieve, as sometimes the paralegal may have a more efficient way to provide what the attorney needs.
- e.* **Communicate.** A successful practice involves excellent communication—communication not only with your clients but your staff as well. For the smooth flow of work, make sure you inform legal staff of important work needed and the timeline by which it must be completed.

f. **Have respect.** Respecting a paralegal's advice is important. As one paralegal advised: "If a paralegal questions a course of action, it's not a challenge to authority. We're thinking of a horror story in a past case or knowing exactly what a partner or older associate wants. In the latter case, the young associate will take a directive from a partner as set in stone when the partner is actually giving a broad description of what he or she wants done and the mechanics are malleable. But the young associate is wary of deviating from what he or she thinks the partner wants. Often a paralegal knows exactly what the partner wants because the paralegal has done it for the partner in the past and can explain it better than the partner explained it to the associate."

VI. CONCLUSION

A paralegal can be invaluable to your practice. Learning how to effectively work as part of a team is an art, not a science. We hope this guide helps you when forming new paralegal-attorney relationships and improving existing ones.

Prepared as a public service by the
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This pamphlet and other free resources
for attorneys can be found online at tyla.org.



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