
PARALEGAL GUIDE



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

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Tips On Creating A Symbiotic Relationship**



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TEXAS YOUNG LAWYERS ASSOCIATION

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I. INTRODUCTION

a. This Guide Is For You

So you recently graduated from law school and landed a job at a firm where you will work with a paralegal¹. Congratulations! Now take everything you think you know about the practice of law and set it aside, because the cold, hard truth is: law school teaches you how to think like a lawyer, but teaches you little about how to *practice* law.

Or perhaps you have already spent time in a firm and are about to strike out on your own and, for the first time, will work with or hire a paralegal.

If you fall within either of these two scenarios or even come close, then this guide is for you.

The Texas Young Lawyers Association and the Paralegal Division of the State Bar of Texas have joined forces to guide young lawyers on effectively working with their paralegal. We hope that paralegals will also find this guide useful or even humorous.

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 Board of Directors for the Texas Young Lawyers Association and their respective paralegals. In addition, several citations are made to the last known Texas Bar Association guide on this topic, *The Attorney and the Legal Assistant: Guidelines For the Evolving Legal Services Team*, Wise, Miguel, May 1993, and to the *Texas Disciplinary Rules of Professional Conduct*.

¹ Throughout the guide, we will use the word “paralegal” to refer to both legal assistants and paralegals.

II. GENERAL ADVICE FOR WORKING WITH YOUR PARALEGAL

The relationship between an attorney and his or her paralegal is crucial to say the least. The two 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 attorney and paralegal work *together* and respect each other.

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 his or her paralegal. The most common answer? You guessed it, respect.

Any experienced lawyer will agree that a paralegal can make or break you. Sara Giddings is quoted as saying: "Remember that your paralegal is not beneath you." As young lawyers we sometimes feel as if the world is our oyster. The practice of law hasn't had time to jade us as it is so capable of doing. Thus, some of us come out thinking that we know *everything*. This attitude doesn't work well when you work with a more experienced paralegal.

In truth, we begin our careers knowing little to nothing about the actual practice of law. However, if you take the time to probe into your veteran paralegal's trunk of knowledge, you will learn that he or she may in fact know just about everything.

This vast amount of knowledge is yours for the taking; the key is usually nothing more than respect.

b. Communicate, Communicate, Communicate

News flash! Your paralegal cannot read your mind. One of the criticisms paralegals have with young attorneys is that they don't communicate. If you realize that you poorly communicate with your paralegal, relax, it's not really your fault.

Many young lawyers have never been responsible for leading a team and delegating tasks. The good thing is that this skill can be developed. All it takes is time and effort.

Start by setting up weekly meetings with your paralegal to go over the past, present and future week's work. These meetings will give you an opportunity to delegate future tasks and review the past and current work being performed. But don't forget to listen in these meetings as well.

Also, limit "last minute" or "emergency" tasks as much as possible. We all know that tasks or projects will come up that will require your paralegal to stop everything he or she is doing and work on the one, single emergency. But unless you want a stressed out and frustrated paralegal, don't constantly operate at this level. Your paralegal, like you, wants to plan out his or her work. This can't be done if you're constantly walking in with emergency projects.

c. *Create a Team Atmosphere*

If you would like, you can go to work every day, head straight to your office, work throughout the day and then go home. You can meet with your paralegal once a week, delegate tasks appropriately and generally be a likable person. A routine such as this will undoubtedly get the work *done*.

But if you want to get everything you can out of the lawyer / paralegal relationship, you're going to have to do more than that. And the effort is really not that much more.

Instead of being a monotonous drone of a lawyer, make work fun. Get excited about your cases and work – as much as your work will allow you to – and pass that excitement on to your paralegal.

Don't just delegate tasks. Get your paralegal involved with the case from the start. Give your paralegal every bit of information you can about the case so they become invested. If a paralegal knows the story of your client, the work he or she is doing is not a task, it is help he or she is providing for someone he or she knows and cares about.

Also, don't overlook simple, kind gestures like a little time off here and there, or a lunch every now and then. Get to know your paralegal for more than just the person who does your work. Let him or her get to know you as more than just the task master. You and your paralegal don't have to necessarily know what is happening in each other's personal lives (though many attorneys and paralegals

have that close of a relationship), but you don't want an impersonal relationship with your paralegal either.

III. WHAT CAN YOU EXPECT PARALEGALS TO DO?

In his revision of *General Guidelines for the Utilization of the Services of Legal Assistants by Attorneys*, Miguel Wise laid out useful information and "rules" to follow when utilizing your paralegal. *The Attorney and the Legal Assistant: Guidelines For the Evolving Legal Services Team*, Wise, Miguel, May 1993.

First, under a lawyers supervision, a paralegal may perform certain functions to the extent those functions are authorized by the statutes and rules. What does this mean exactly?

Well, first a paralegal must operate under the supervision of the lawyer. We have seen times where young lawyers abdicate power and authority to perform work to their paralegal. Sometimes young lawyers do this because they are ignorant regarding the work that needs to be done, and sometimes young lawyers do this because they simply want to shirk responsibility. Regardless of the reason, any young lawyer who chooses this style of leadership is certain to realize one day that his or her practice has fallen into disarray.

By no means are we saying that a competent paralegal is sure to fail. But without someone with the power and authority to act guiding and managing the work, it will undoubtedly be lackluster. One wouldn't leave a platoon of enlisted men to fight the enemy without their lieutenant. The same is true in the paralegal / lawyer relationship.

Next, Wise's guidelines say that a paralegal may perform those tasks that are authorized by statute, court, rule or regulation, including the Texas Rules of Professional Conduct. This is a broad statement, but below is a list of tasks that our board members commonly ask their paralegals to complete:

- i. Pulling or printing cases
- ii. Cite checking cases
- iii. Working in document databases
- iv. Drafting routine pleadings
- v. Preparing witness kits
- vi. Preparing and filing court filings
- vii. Preparing binders for attorneys (key documents / key pleadings / etc.)
- viii. Doing background research on parties and witnesses
- ix. Preparing legal spreadsheets
- x. Managing the calendar – ONE OF THE MOST IMPORTANT TASKS
- xi. Drafting and responding to routine discovery
- xii. Drafting shells of motions and other pleadings
- xiii. Communicating with clients and opposing counsel regarding routine issues
- xiv. Drafting estate planning documents
- xv. Drafting corporate formation documents

Of course, this list is not exhaustive. And don't forget, every one of these tasks must be performed under the supervision of the attorney.

IV. WHAT SHOULD YOU NOT EXPECT PARALEGALS TO DO?

a. Texas Disciplinary Rules of 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 make sure that your paralegal is aware of the Texas Disciplinary Rules of Conduct. A lawyer is responsible for a paralegal's work product, and when taking into account how much supervision should be given, it is important to acknowledge that paralegals do not have legal training and that you alone are subject to professional discipline.

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 your paralegal does not engage in the unauthorized practice of law. This means that you must ensure that your paralegal is not exercising independent judgment or otherwise practicing law.

b. What cannot be delegated to a paralegal

- 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 or not a paralegal is giving legal advice, the paralegal should ask three questions before answering: (1) Does the answer require the paralegal to utilize her legal knowledge or judgment? (2) Does the answer concern the client's legal rights or responsibilities? (3) Will the client take some action as a result 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 your paralegal regarding these questions and to inform them regarding what is considered giving legal advice.
- iv. Responsibility for work product. One thing paralegals do not feel comfortable with is when attorneys do not closely and carefully review their work before circulating it to other team members, opposing counsel, or clients. Since the responsibility for work product cannot be delegated, ultimately all of 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 legal questions. A paralegal can serve as a good asset in client communications, but paralegals find communication with a client difficult when they are 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, it is advisable that you hold the initial client meeting, not your paralegal. You may have them involved in the initial client meeting but they should not be the only one meeting with the client.

- vi. The signing of legal pleadings. Not only should a paralegal not sign a pleading, but many of them do not feel comfortable signing a pleading on behalf of an attorney. If there is a reason that a paralegal has to sign a legal pleading on your behalf, be sure that there are methods in place to make sure that the pleading is correct and should be filed.
- vii. The negotiation of settlement agreements.
- viii. Solicitation of legal business.
- ix. Advertising or contracting with members of the general public for the performance of legal functions.
- x. Representing a client in court. Although in certain instances a paralegal may appear before a court on administrative matters, many paralegals are not comfortable attending hearings and do not believe that it is their place to do so.

V. WHAT CAN YOU DO TO AVOID FRUSTRATING YOUR PARALEGAL?

Your paralegal can be your greatest ally and can help you immensely. Oftentimes your paralegal has been at the job much longer than you have been a lawyer, and the advice that they can offer is invaluable. As a young lawyer you certainly do not want to frustrate your paralegal. The paralegals we interviewed gave the following advice:

- a.* **Have patience.** It is important that you keep track of all tasks assigned you have assigned to your paralegal. You may be overwhelming them with work and not even realize it. It is important to be mindful of how long it takes to complete a task and to determine if your expectation regarding completion is realistic.

- b.* **Be consistent.** Do not continuously change the instructions on a task. Be sure to give clear instructions and stick with those instructions. As attorney Nick Guinn 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 get something out. If you or your paralegal are rushed to get something out, there is a much greater likelihood that mistakes will be made. However, being organized does not mean that you have to micro-manage your paralegal. If they have proven that they are capable of handling the task, let them handle the task without unnecessarily micro-managing them.
- d.* **Make your expectations clear.** It is important from the beginning of working with your paralegal that you set forth your expectations of them. Additionally, be clear as to what you expect regarding the work product that they are producing. It is frustrating to paralegals when the attorney is surprised at the work product that they receive. It is on you to clearly set out what your expectations are in regards to work product.
- e.* **Communicate.** A successful practice involves communication—communication with not only your clients but your staff as well. You need to communicate to your paralegal what your expectations are regarding a particular client or matter. For example, if there is a meeting about a particular case and during that meeting it is determined that a paralegal needs to perform a follow-up task, convey this information right after the meeting. If you communicate directly with a client, you will need to relay that information to your paralegal. This is important because you may promise the client certain things but fail to inform your paralegal of these things, and then you may be forced to rush them to complete something that they did not even know about.
- f.* **Have respect.** Respecting your paralegal is important. Do not get upset when a paralegal questions you, but rather to listen to his or her question and the advice that comes with it. As paralegal Casey McGovern states: “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.” As one paralegal reminded us, respecting your paralegal means that you do not belittle or embarrass them, particularly in front of clients, or use them as the reason something was not done or was done incorrectly, when it is not their fault. Nobody wants to be a scapegoat, so don’t turn your paralegal into a scapegoat.

VI. CONCLUSION

A paralegal can be invaluable to your legal practice. Learning how to effectively work with your paralegal is an art, not a science. We hope that this guide helps you when forming new paralegal-attorney relationships and improving on existing paralegal-attorney relationships.

— NOTES —

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