

# Chapter 2: Defining the Paralegal Profession

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## Chapter Outline:

- ✓ § 2.1 What is a Paralegal?
- ✓ § 2.2 Discussion Points about the Profession
- ✓ § 2.3 Paralegal Education and Regulation
- ✓ § 2.4 Career Options

## § 2.1 WHAT IS A PARALEGAL?

**paralegal** *n* :  
a person with specialized training who assists  
lawyers [synonym: *legal assistant*]

This common definition for the term paralegal, provided by the *American Heritage Dictionary*, demonstrates the problem that has always faced the profession: There seems to be no general agreement about what a paralegal is.

Couldn't that definition apply just as well to a legal secretary? A librarian? A file clerk? The janitor? Is it really the best possible definition?

The *American Bar Association*, using *Merriam-Webster's Dictionary of Law*, provides a slightly more informative definition:

**paralegal** [*'par-e-'le-gel*] :  
of, relating to, or being a paraprofessional who assists a lawyer

This definition at least eliminates the janitor. But what is a “paraprofessional”? Does that mean that paralegals are “kind of” professional? Back to the dictionary.

**paraprofessional** *n.*

a trained worker who is not a member of a given profession but who assists a professional

Does this make things any clearer?

The authors of this manual beg to differ with American Heritage, Webster’s, and even the *American Bar Association*.

The truth is that:

- Paralegals do more than assist lawyers
- Paralegals are professionals
- It’s time for a better definition

**Paralegals Do More Than Assist Lawyers**

Currently, paralegals work in dozens of different situations, including:

- traditional law offices
- courts
- governors’ offices
- mayors’ offices
- the White House
- corporate law offices
- real estate offices
- the FBI
- prosecutors’ offices
- public defenders’ offices
- investigative positions
- government agencies
- child welfare groups
- political action committees
- social service agencies
- hospital administrative offices
- freelance work for attorneys
- owners of small businesses, representing their own interests

Paralegals work in a variety of environments. They perform an incredible variety of tasks, most, but certainly not all, related to working for attorneys. For instance, when working in political offices, research, media relations, and other tasks may be performed for non-attorney supervisors. When employed in a real estate position, it is possible that no attorney is in a supervisory capacity. Law-enforcement paralegal positions, such as those with the FBI, are often without direct attorney supervision.

### **Paralegals Are Professionals**

The debate continues about whether paralegals are professionals or staff. These debates tend to center around how a paralegal is compensated: Hourly, or by an annual salary. The majority of paralegals are not paid hourly, but are paid an annual salary. Unlike other staff, a paralegal is commonly provided with office space.

The more relevant question in determining the professional status of a paralegal is the role the individual plays in the representative process. Most paralegals engage in more than clerical work. They perform tasks that require specific skills such as legal research, interviewing, and drafting legal documents. Most paralegals are issued business cards.

Most attorneys bill paralegals on an hourly basis to the client. Many courts have established that paralegals are different from other office staff. Courts have declared, for instance, that hours spent on a case by a legal secretary are not billable to the client. The secretary is considered staff, part of the overhead expenses for which the attorney is responsible. (Attorneys are traditionally forbidden from billing for overhead costs, other than those costs incurred specifically due to an unusual representation.)

These are only a few of the indicators of the status paralegals enjoy today. Most attorneys consider paralegals professionals. You are not entering the paralegal “paraprofession,” but the paralegal *profession*.

### **It’s Time for a Better Definition**

The skills paralegals use are remarkably varied. Some investigate. Some advocate. Many are experts at creating legal documents. Some function primarily as legal researchers. Some interview clients. Some interview witnesses. Most use litigation skills. Many use all of these skills, in one form or another.

We now have essentially created our own definition for the word paralegal:

**paralegal** *n.*

a person who assists an attorney in advocating on behalf of a client or who works for a corporate or government entity dealing with legal matters, and who, in the course of this advocacy, may create legal documents, investigate relevant facts, conduct legal research, interview clients and witnesses, and perform other relevant tasks as necessary

This definition more clearly describes a paralegal, but we still have a problem. This definition could as easily pertain to a lawyer. We must clarify the differences between an attorney and a paralegal. To do so is actually quite simple. Despite all the training a lawyer receives, there are only two functions that a lawyer may engage in that a paralegal may not:

1. *A paralegal may not give legal advice*
2. *A paralegal may not act as a legal representative on behalf of another in a court of law*

That's it. Every other task that an attorney engages in may be legally performed by a paralegal under the supervision of an attorney. There are other specific tasks that a paralegal may not perform, such as setting fees, asking questions at a deposition, and accepting or rejecting cases. But these are not allowed because, in fact, they are part of legal representation. After a slight modification, we have the following definition:

**paralegal** *n.*

a person who assists an attorney in advocating on behalf of a client or who works for a corporate or government entity dealing with legal matters, and who, in the course of this advocacy, may create legal documents, investigate relevant facts, conduct legal research, interview clients and witnesses, and perform any other tasks that an attorney may perform, except give legal advice or act as a legal representative on behalf of another in a court of law

Paralegals perform an incredible variety of tasks and have advanced skills in legal research and writing. Most attorneys understand that performing these tasks well requires training and hard work. This is not to say that a paralegal can replace a lawyer; only an attorney can identify a legal issue from a given set of facts and give legal advice. These are the most important skills taught in law schools and represent an important difference between the professions.

Smart attorneys recognize the abilities of good paralegals and strive to utilize them extensively and effectively.

This brings us to a final, important realization:

- Some paralegals do substandard work.
- The majority of paralegals do average work.
- A few paralegals do excellent work.

Where will you be grouped? These manuals will give you every opportunity to become an excellent paralegal. The more you put into the program, the more you will get out of it. The time and effort you put into your education is an investment in yourself.

This is a relatively new profession and there is a hidden advantage to the lack of a universally recognized definition of the paralegal profession. It means that the final definition has yet to be created. As a paralegal, you will help create that definition. Like it or not, you will help create that definition by your conduct, your ethics, the quality of your work, your attitude, and, yes, by your professionalism.

## **§ 2.2 DISCUSSION POINTS ABOUT THE PROFESSION**

### **What are the Differences Between Legal Assistants, Paralegals, and Legal Secretaries?**

As a rule, the titles *legal assistant* and *paralegal* refer to the same profession. A legal secretary, however, is different. A legal secretary's duties are fundamentally clerical in nature, while a paralegal may be asked to perform tasks that call for specialized judgment and skills most legal secretaries do not possess.

Legal secretaries perform critical tasks for law firms. Some are compensated as well as paralegals. Some firms use a legal secretary to perform paralegal duties, creating a hybrid: Half paralegal and half legal secretary. A paralegal in such a position should insist on the title legal assistant, since it will make obtaining future employment easier.

### **Why isn't it a Good Idea for a Paralegal to Offer His or Her Services Directly to the Public?**

The vast majority of paralegals work under the supervision of attorneys who are responsible for the actions of those paralegals. To offer services

to the public directly puts the paralegal in the position of making legal judgments or even giving legal advice. To do so would be to engage in the unauthorized practice of law, which is punishable as a crime.

**Should a Paralegal Freelance?**

Yes, if the services are provided to lawyers and law firms. In fact, freelance paralegals can be very well compensated by their client law firms. However, as mentioned above, a paralegal should not offer services to the general public without an attorney's supervision.

**§ 2.3 PARALEGAL EDUCATION AND REGULATION**

**Licensing**

For many years, members of the paralegal profession have struggled with the issue of whether paralegals should be regulated. This would involve some form of licensing. The *National Association of Legal Assistants – Paralegals* (NALA) and the *National Federation of Paralegal Associations* (NFPA), the two largest national paralegal associations, approach the question from different positions with NALA being most fervently in favor of regulation. NALA has long offered a national certification examination. Those who pass the exam are authorized to use the initials "C.L.A." after their names (The initials "C.L.A." have been patented, but the term "Certified Legal Assistant" is not patented, since one may be certified by other entities besides NALA).

Both the NALA and NFPA are private organizations and have no power to require members of the profession to submit to regulation. Some groups, including some local paralegal associations, have attempted to convince state legislatures to license paralegals. However, states have been reluctant to require licensing.

There have been two main arguments against licensing. First, the primary reason for licensing a profession is protection of the public. Electricians, doctors, and plumbers are licensed because an incompetent individual can do damage to the client. But does the public need protection from paralegals? Since paralegals aren't allowed to give legal advice, with or without licensing, who is being protected? In fact, the vast majority of paralegals work under the direction of an attorney. The public is protected by the attorney's responsibility and liability to the client. This is called the doctrine of *respondet superior*. Second, licensing is being used by some

as a means of "job protection," an attempt to make it more difficult to enter the field to protect current members of the profession. Job protection is not a valid motive or justification for licensing.

### **Paralegal Education**

There are hundreds of paralegal programs in the United States. They usually take one of the following forms:

- An *undergraduate certificate program*: A paralegal certificate for graduates with only a high school diploma or GED
- A *post-baccalaureate certificate program*: A paralegal certificate for graduates with college degrees
- A *two-year associate's degree program*: A popular form of paralegal study involving general educational requirements as well as paralegal-related courses
- A *four-year bachelor's degree program*: A relatively new form of paralegal education providing a full degree

The *American Bar Association* (ABA) does not accredit any paralegal program. The ABA does, however, have an approval process. The overwhelming majority of paralegal programs have chosen *not* to seek ABA approval. In fact, the approval process has been somewhat controversial. Questions regarding the ABA approval process have centered on whether attorneys should be the entity overseeing paralegal education.

Some feel that attorneys are the most logical oversight entity for the paralegal profession and that the ABA would be the logical instrument for setting educational standards. There are others, however, who feel that attorneys, and the ABA, could face conflicts of interest. If the ABA controls the education of paralegals, whose interest will the organization protect: that of paralegals or that of attorneys? Should the paralegal profession submit itself to control by the ABA, an organization that won't even allow paralegals to become voting members?

Because of what some consider to be the ABA's inherent conflict, the cost of ABA approval, and questions regarding the ABA's educational goals for paralegal programs, the majority of schools have opted out of the approval process. Some schools, however, value ABA approval as a method of indicating to potential employers that the program offers a certain standard of educational experience, especially those schools that are not top tier, major universities. Logically, then, community college offerings are the most common form of ABA approved programs.

### **Attorney Preferences for Paralegal Education**

Most importantly, how do attorneys view the various forms of paralegal education? Is one form preferred over another? How does one determine what kind of education attorneys prefer?

The most straight forward means of determining the value attorneys place on paralegal education is to ask the following: At what rate are paralegals compensated, and is there a difference in compensation based on the type of education?

The *National Association of Legal Assistants* (NALA) conducts a Salary and Compensation Survey approximately every two years. Since at least 1996, the following trends have been established:

1. Those in the profession who hold paralegal certificates (either undergraduate or post-baccalaureate) have been the best compensated paralegals in each and every survey
2. Paralegal certificate graduates earn from ten to seventeen percent more in compensation than paralegals possessing either Associate's or Bachelor's degrees in paralegal studies

Why would those with certificates be so much better compensated than paralegals with degrees in paralegal studies? The answer, it seems, is quite simple. Attorneys prefer paralegals with skills, and certificate programs are best at developing those skills. Thus, paralegal certificate program graduates tend to eventually earn more than those from other programs.

For paralegals, and for their attorney/employers, it's all about the skills.

## **§ 2.4 CAREER OPTIONS**

Most paralegals are employed in private law firms. Law firms vary greatly in size and structure. Most firms practice several areas of law; others specialize in one or two areas. There are advantages and disadvantages to working in firms, depending more on their size than their specialties.

### **Firms with One to Five Attorneys**

A paralegal who works in a firm of this size will most likely work as the sole paralegal, or with just one or two other paralegals.

*Advantages:* Many experienced paralegals at small law firms are given considerable responsibility. Some become office managers. Once an



attorney at a small firm becomes dependent on a paralegal, the paralegal is able to command a higher salary, more flexible hours, and better vacation time than paralegals in larger firms.

*Disadvantages:* The small firm typically starts paralegals out at a lower salary with fewer benefits than larger firms. Many small firms pay hourly wages as opposed to annual salaries. Some firms use employees as a cross between a paralegal and a legal secretary. This may be acceptable for an entry-level employee, but is usually not a position that a paralegal with desire for the long term.

### **Firms with Six to Twenty-five Attorneys**

A paralegal who works in a firm of this size will most likely work as one of several paralegals, on average from four to eight.

*Advantages:* These firms tend to offer higher starting salaries, usually have good benefit packages and are likely to practice in several areas of law. This means that the paralegal may be able to move from one area of practice to another, gaining experience in several areas of law and becoming more marketable.

*Disadvantages:* Some firms of this size will start a paralegal out at a low salary, or even hourly, until a three- or six-month review. Some firms also have a waiting period before benefits begin.

### **Firms with Twenty-six or More Attorneys**

Large firms average one paralegal for every four attorneys.

*Advantages:* Firms of this size usually provide employees with excellent benefit packages, including retirement plans. Starting salaries for large firms tend to be higher than those offered by smaller private law firms. Jobs are more secure, since the larger firms tend to be well-established and less likely to split apart. As attorneys come and go from large firms, they often ask favorite paralegals to move with them and offer them significant financial incentives.

*Disadvantages:* As a rule of thumb, the larger the firm is, the less weight an individual paralegal carries. A great paralegal is more indispensable to a five- or ten-attorney firm than to a firm with 50 or 60 lawyers. Larger firms are more likely to have set salaries and benefits that are non-negotiable. Some firms discourage movement from one area of practice to another within the same firm. Finally, a paralegal working for a firm of more than 50 attorneys is more likely to feel like a cog in a machine than a paralegal working at a smaller firm.

## **PARALEGAL POSITIONS AND RELATED DUTIES**

Paralegals in all areas of law are likely to perform duties related to:

- *client correspondence*
- *file maintenance*
- *client communication*
- *document preparation*
- *tracking hours worked on behalf of the client*
- *drafting memoranda*
- *telephone communication*
- *calendarizing deadlines and due dates*

Paralegals working in traditional law firms may also work in specialized areas with specialized demands, as follows:

### **Litigation**

Litigation is by far the largest area of practice for paralegal employment. Tasks include drafting discovery documents and pleadings, conducting law office investigation, arranging for service of process, setting trial dates, setting depositions, drafting deposition questions for the attorney, interviewing witnesses, conducting legal research, drafting legal memoranda based on research results, drafting motions and briefs, interviewing witnesses, interviewing clients, filing documents with the court, and various duties related to court and administrative procedures.

### **Construction Defect**

A fast-growing area of paralegal employment is in construction defect, where they usually coordinate discovery documents. Due to the large amount of documentation involved, the paralegal will often coordinate document banks (or depositories), companies that hold all discovery in a centralized location. Paralegals also arrange for depositions and arrange for (and often attend) destructive testing of buildings to determine the techniques and materials used in construction.

### **Personal Injury**

Duties in personal injury are similar to those found in standard litigation positions, but are also likely to include obtaining medical records, arranging for expert medical testimony, and possibly performing some initial accident scene photography. Any medical experience is helpful when seeking employment in this area.

**Bankruptcy** Paralegals commonly sit in on the initial client meeting after which the attorney may ask the paralegal to prepare the bankruptcy documents, including schedules of assets and debts. During this process, the paralegal may meet with the client several times to ensure the accuracy of the documents. The attorney will review the finished documents before they are filed with the court. After filing (depending on the chapter that the bankruptcy is filed under), a meeting is set with the trustee, during which creditors are allowed to ask questions of the debtor. Bankruptcy paralegals may also conduct a significant amount of legal research.

**Transactional or Contract** Paralegals may be involved in drafting contracts and other agreements. In some cases, paralegals may be expected to track the performances of one or more parties who have entered into an agreement. For instance, one paralegal monitors reports from various television stations to determine whether advertisements were run at the proper time and in the agreed-upon frequencies. If there are discrepancies, he or she contacts the stations to arrange for compensatory runs of the advertisements. Another drafts contracts for a Romanian cable company. The attorney he works for is in Europe (but licensed in the United States). When a cable company on the west coast agrees to offer the channel, the paralegal sends the contract to the attorney for review, then monitors the performance and ad revenue.

**Incorporation** Incorporation is a document-intensive specialty that can be a rich source of employment for paralegals. Once a paralegal is familiar with the intricacies of preparing articles of incorporation and preparing annual reports and lists of officers, he or she becomes a valuable resource. An incorporation paralegal must have excellent long-term calendaring skills so that corporations do not fall dormant.

### **Immigration**

Paralegals are especially valued in immigration positions if they speak more than one language. Common tasks include interviewing clients, legal research, assisting clients with form completion, and sometimes even acting as translator between the client and the attorney.

Immigration paralegals should not engage in freelance form assistance. Some of the decisions made in filling out immigration forms call for legal judgments only an attorney should make.

**Real Estate**

Real estate attorneys employ paralegals to conduct title searches, file titles with courts, and draft leases or other documents for the attorney.

**Probate and Estate**

Probate and estate paralegals are in great demand. Paralegals are used to conduct legal research, draft wills and trusts, meet with clients, contact family members, conduct skip-traces (looking for missing relatives), monitor and maintain trusts, and open probate in the appropriate court.

**Criminal Law**

For many years, attorneys were reluctant to use paralegals in criminal representation where a client's personal freedom was at risk, but paralegals are now being used extensively in this area to handle communication with detained clients and with the prosecutor's office, as well as to obtain police and other law enforcement records. Being a strong legal researcher is a real advantage in this work.

**Administrative Agency Representation**

A new and dynamic area of employment for paralegals involves assisting clients who need to present a claim, defense, or proposal to an administrative agency, who need help with that presentation, but who do not want to, or can't afford to, hire a lawyer. This practice presents a bit of a gap in the unauthorized practice of law rules that typically prevent paralegals from representing clients in legal matters or giving legal advice. However, administrative agencies are not courts and thus most do not require that a representative in those proceedings be an attorney. Some examples of administrative agencies that typically allow for non-attorney representation include the Social Security Administration, Veteran's Administration, most state welfare agencies, as well as local and state zoning boards. (Note that the big exception to the acceptance of administrative paralegal representation is anything involving taxes, in which case any representative is required to be an attorney.)

**Law Office Manager or Administrator**

While not technically a paralegal position, a person with a paralegal background can make an excellent law office manager. Duties may include hiring and firing, ordering supplies, acting as arbiter for personnel conflicts, distributing work assignments, and conducting annual reviews. In some smaller firms, the office manager may be responsible for distributing paychecks and maintaining the firm's bank account, as well as handling overflow work as needed.

## **GOVERNMENT POSITIONS**

### **Courts**

Some paralegals are hired as law clerks for judges. In this role, the paralegal conducts legal research, drafts orders, checks citations, and helps to set hearings and trials.

### **Office of the Mayor or Governor**

Working as a paralegal for a person who holds a political position can mean that the position lasts only as long as the individual remains in office. Specialized duties include tracking legislative activity, drafting proposed legislation, coordinating travel and meeting schedules, arranging for special recognition of citizens, and monitoring the press.

### **The Federal Bureau of Investigation (F.B.I.)**

The Federal Bureau of Investigation hires paralegals to work at its headquarters in Washington, D.C. and in its many field offices throughout the United States and within its special divisions.

The FBI employs its own attorneys as legal counsel, and paralegals are employed to assist these attorneys. Most asset-forfeiture divisions throughout the country employ paralegals to assist in title searches, property seizure documentation, and preparation of court documents.

### **Prosecutors**

State prosecutors, such as district attorneys, hire paralegals to prepare correspondence, draft pleadings and motions, research legal matters, and communicate with other government agencies.

Federal employees include paralegals working for the United States Attorney General in Washington, D.C., as well as in all offices of United States Attorneys throughout the country.

**Social Services** State social service departments employ legal assistants to appear at administrative hearings, prepare documents related to child welfare, conduct research, and monitor children in foster-care settings.

**Government Agencies** Federal and state administrative agencies use paralegals for many standard duties. In some cases, paralegals represent the agency and the agency's position. In many administrative settings, attorneys may not need to be present.

## **LARGE AND SMALL BUSINESSES**

### **Corporations**

Most large corporations have legal counsel and employ paralegals. Corporate salaries are usually higher than those in law firms or government positions and benefits are usually excellent. Duties vary according to the corporation.

### **Real Estate Offices**

Real estate offices sometimes employ paralegals to conduct title searches, file titles with courts, and communicate with outside counsel.

### **Hospital Administrative Offices**

Hospitals sometimes have their own legal departments. In such cases, paralegals are used for standard duties, as well as for tasks such as sanitizing hospital records, responding to discovery requests, and communicating with insurance companies. Some hospitals without legal departments hire paralegals to perform within the hospital (but under the supervision of outside counsel) the tasks mentioned above.

### **Insurance Companies**

These document-intensive companies use paralegals to review policies, request documentation of damages, and fulfill many standard paralegal duties.

## **NONTRADITIONAL EMPLOYMENT**

**Political Action Committees and Campaigns** Most federal political campaigns, and many state campaigns, hire paralegals to help monitor the press and opposition campaigns, conduct opposition research, and track donations to ensure compliance with federal election laws. State and federal political parties also employ paralegals at headquarters.

### **Investigative Positions**

In many states, investigators must be licensed. Paralegal education can benefit these individuals. In addition, some larger investigative agencies hire paralegals to conduct research, communicate with client attorneys, assist in skip searches, monitor jury panels, and interview witnesses.

### **Small Business Owners Who Represent Their Own Interests**

Many individuals who own their own businesses obtain a paralegal education so they can conduct simple legal tasks. For instance, some landlords want to draft leases for their own properties or evict tenants without hiring a lawyer. As long as the individual is creating such documents for his or her own business, this conduct is permissible.

### **Freelance Paralegals**

Many paralegal service businesses have arisen throughout the country, some working as storefront operations, others from private residences, relying on newspaper or Yellow Pages advertising. Such paralegals specialize in document preparation and assist clients in filling out forms. Providing such services to the general public without attorney supervision presents a serious dilemma. Determining the appropriate form and completing it often requires legal judgment. Although document preparers insist that they simply fill in the information provided by the client, it is very difficult not to express opinions in response to client questions. In other words, freelance paralegals are very likely engaging in the unauthorized practice of law.

However, there is a variety of freelance paralegal practice that is perfectly ethical and legal. These freelance paralegals, usually experienced legal assistants, work for lawyers and law firms instead of the public-at-large. Since the paralegal has a supervising attorney, no ethical standards are compromised. In addition, paralegals working as freelancers for law firms are compensated at a much higher rate than those offering services to the public. Paralegals working for several firms, as on a contract basis, are often referred to as *independent paralegals*.

### **Paralegal Firms**

The paralegal firm is a small and relatively new development. Typically, several paralegals form a company, hiring an attorney to review their work. These businesses commonly prepare wills, draft contracts and leases, and appear at administrative hearings and in small claims courts where paralegal representation is allowed. It is critical that an attorney review virtually all work under such an arrangement. There may be additional ethical issues, such as the question of fees, which are supposed to be set by an attorney.

## **CHAPTER 2 WRAP-UP**

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### **WHAT YOU SHOULD KNOW...**

After reading this chapter you should know the following:

- The basic definition of a paralegal (or at least the concept)
- Understand the differences between paralegals and legal secretaries
- The ABA's role (or lack thereof) in regulating the profession
- The four most common forms of paralegal education
- The advantages and disadvantages in working for various size law firms
- Have an idea of the vast opportunities and different areas of law that utilize paralegals

### **ASSIGNMENTS**

There are no assignments for this chapter.