

§ 11.2**The Three Stages of Litigation***Tasks for the Paralegal***The Pretrial Stage**

The pretrial stage of litigation is the most crucial for both the paralegal and the client. Ninety-five percent of cases never get to trial. The success or failure of a case usually hinges on the work performed during the pretrial stage. Even those cases that go to trial are often decided on work that was done during the pretrial stage. The pretrial stage lasts until the opening statements in the trial. Tasks include:

Client Interview

Many attorneys assign paralegals to conduct, or at least attend, the first consultation along with the attorney. Practice your note taking skills since the information gathered during this interview may guide the initial representative process.

Draft Pleadings

Paralegals often create documents such as complaints, answers, and counterclaims. These documents are created for the attorney's signature under his or her supervision.

Interview Witnesses

A paralegal may be asked to interview individuals who may have information relevant to the matter being litigated.

Draft Discovery

Discovery is the pretrial process of obtaining documents and information from the opposing party. A paralegal is usually deeply involved in the preparation of such documents. The attorney should review the requests before sending them to the opposing party.

Answer Discovery

When the opposing party sends discovery, the paralegal often works with the client to provide responses. The attorney should review all work before sending it back to the opposing counsel.

Investigation

Discovery generally involves obtaining information from the other party. Obtaining relevant facts and information from other sources involves law office investigation.

Draft Memoranda

After conducting research, a paralegal may create an interoffice memorandum that informs the attorney of how cases and statutes apply to the matter being litigated.

Set Hearing Dates

A paralegal may need to contact the court to set a date for a hearing, during which the court can rule on motions filed by either of the parties. A hearing differs from a trial because a hearing deals with a specific step of litigation, such as a motion to suppress evidence.

Set Trial Dates

A paralegal is often the person who contacts the court and the other parties involved in the litigation to set a date for trial. The most frustrating part of setting dates may be finding a day that is clear on the calendars of the court and all parties.

Draft Motions

Paralegals often create motions for the attorney. A motion asks the court to rule on a procedural matter and is often accompanied by a trial brief (sometimes called “memorandum of law”). The motion makes the request, while the brief (or memo) presents a legal argument citing authority to attempt to convince the court to rule in that party’s favor.

Draft Trial Brief

A trial brief argues a legal point to the court. It usually attempts to convince the court to rule in favor of a motion that has been filed with the brief.

Correspondence

A paralegal often writes letters or emails to the client, witnesses, and even to opposing counsel. Such correspondence should only be created under the direction of your supervising attorney.

Obtain Records

Paralegals may gather relevant documents from companies and agencies. These can include such items as hospital records, criminal records, and employment records. Get into the habit of having a client sign several general, as well as specific, release forms at the start of litigation authorizing your firm to obtain records on his or her behalf.

Trial Notebook Preparation

A paralegal may collect and organize all the pleadings, discovery requests, discovery responses, exhibits, witness lists, witness questions and other material that an attorney may need to access at trial. This collection is called a trial notebook. A notebook may also be prepared for a hearing and is called a hearing notebook.

Arrange for Service of Process

Process is the summons and complaint. A paralegal may arrange for a non-interested party (usually a process server or county sheriff) to serve the documents on the defendant. This constitutes service of process.

Set Deposition

Setting a deposition means contacting the witness who is to be deposed, arranging a time for the deposition, and giving notice to all parties when and where the deposition will take place. This is accomplished by sending out a notice of deposition. All parties have the right to attend and to ask questions at a deposition.

Draft Deposition Questions

While a paralegal is not authorized to ask questions at a deposition, it is not uncommon for a paralegal to draft deposition questions for the attorney's use. Start preparing such questions with the information you have from any previous interviews conducted with the witness. In addition to researching form books in the law library for discovery questions, you can modify interrogatory questions to make them deposition questions.

Legal Research

Legal research is the act of finding law relevant to the matter being litigated or locating materials that will assist the attorney in preparing for trial.

Digest Depositions

Depositions can be hundreds of pages long. A paralegal may summarize each page to make the relevant information easier to access.

File Maintenance

A paralegal should keep the client file very organized. Good organization will be noticed and appreciated by the attorney. A paralegal should form the habit of spending 20 minutes each day organizing files that were accessed earlier in the day. Also, get in the habit of replacing any documents removed from the file as soon as possible.

Data Retrieval

Data retrieval is closely related to file management. Whether documents are in the file, separate folders, or elsewhere, they need to be easily accessed.

Expert Bona Fides

Expert bona fides means proof of a witness's expertise. If an expert witness is called to testify at trial, the requesting attorney may want the paralegal to obtain the expert's resume and *Curriculum Vitae* (a listing of any honors or publications associated with the expert).

Arrange Subpoenas

A witness called at trial or for a deposition, should be subpoenaed. Include a check to cover witness fee payments and mileage compensation. Witness fees change from county to county. Check your local court rules for witness fees in your jurisdiction.

Skip Trace

If a witness or a client is missing, the paralegal may be asked to try to locate the person.

File Court Documents

The paralegal may file pleadings or motions with the court or arrange for documents to be filed. The paralegal should make sure the court gets the original and all parties receive a copy stamped by the court. If the document is a complaint, include a check for any filing fees. Some courts require cover sheets to accompany complaint filings. In addition, electronic online filing is now available in almost every jurisdiction, but the methods vary from court to court.

Calendar Control

A paralegal may log appointments, hearings, and trials in the attorney's calendar. Be accurate. An important tip: When you log a new meeting in the attorney's calendar, place a sticky note on that page alerting the attorney to the new entry. If the attorney uses a computerized calendar, place a sticky note on the attorney's computer screen with the new appointment information. This may prevent confusion later.

Client Communication

Do not underestimate the importance of this task. Attorneys are notoriously bad at client communication and the paralegal can be of significant assistance in assuring positive client relations.

Settlement Support

If the case settles prior to going to trial, some of the provisions of the settlements may need monitoring. For example, if the settlement involves periodic payments, a paralegal should calendar the payment dates and communicate with the party to confirm that payment has been sent or, in some circumstances, received.