

What Happens at an Arbitration Hearing?

The arbitrator sets a hearing date. During the hearing, both parties have a chance to present arguments, present evidence, and call witnesses to testify.

The examination during the hearing is similar to examination during a deposition with the rules generally more lax than in-court examination. Subpoenas for witnesses are permitted, but not generally required.

Can a Party Appeal a Decision?

The mechanism for “appeal” of an arbitrator’s decision is usually a *motion for trial de novo*, a request for a court trial. In many states, however, if a party files a *motion for trial de novo* to reverse the arbitrator’s decision and loses, the court may order the losing part to pay court costs and the opposing party’s attorney’s fees.

To determine the details of arbitration in your state, check your court rules, including any arbitration rules. You may also call the clerk at the court in which the action is being litigated.

§ 11.6**Examples of Paralegals as Advocates**

“No one should stand in the way of your client’s rights”

EXAMPLES OF ADVOCACY

In legal terms, advocacy is usually thought of as a part of the role of an attorney. The attorney argues for, or advocates on behalf of, his or her client. This is especially important in litigation. However, today advocacy is not simply argument on behalf of a client. It is any attempt to convince someone to do something even when that person may not have any motivation to do so. This can be in court in front of a judge, or it can be at a hospital trying to convince a doctor to release patient documents. In many cases, the paralegal becomes an extension of the attorney during the litigation process by obtaining information relevant to representation.

When a consumer talks a store clerk into taking an item back without a receipt, he is being an advocate. When a woman talks her way out of a traffic ticket, she is being an advocate. When a paralegal convinces a hospital records clerk to let him view the un-sanitized notes in a patient’s file, he is being an advocate for his client.

The difference between a good paralegal and a great paralegal is very often a matter of advocacy. When paralegals understand their advocacy roles, their drive, focus and persistence of representation improve. Furthermore, developing good advocacy skills is often a matter of attitude.

You may like your client. You may thoroughly dislike your client. You may think he is being abused. You may think he is being abusive. However, when you leave that office to interview a witness, visit the law library, or perform any other task on behalf of a client, you must leave your feelings about the client behind. You are not only representing your client, but also his or her right to effective representation and a fair trial. Your attitude needs to be "*no one will stand in the way of information to which my client has a right*". In fact, a paralegal should be self-righteous about the client's rights. Attempting to keep a paralegal from obtaining information abuses the client's constitutional rights. This attitude will make you a better advocate.

Paralegal Advocacy is a Valued Asset

J.W. was a legal secretary when she enrolled in a paralegal program. During the research part of the course, she asked to research an actual legal matter in which her firm was involved. The firm's client was an 18-year-old girl. She had worked between the ages of 12 and 16 in her father's store. The money she made was kept in an account for her college. When she was 16, her parents divorced, forcing the young woman to choose where to live. When she chose her mother, the father emptied the account and refused to give the money to his daughter. The senior partner on the case assigned one of the firm's associates to assist in representation. The critical hearing date approached, and the associate was pessimistic about the client's chances. J.W. decided to take it upon herself to conduct some legal research, but it was not until she searched in *Am. Jur. Proof of Facts* that she hit the jackpot. The "proof" stated that once a minor reaches majority, any property or monies belonging to him or her must be provided and that to fail to do so would constitute theft. J.W. prepared a memorandum for the attorneys. It included case law, the required elements (proofs) that she found, and even a checklist and some forms.

However, when she presented the memo to the associate, he brushed it aside saying, "This is criminal, and our case is civil. It doesn't apply." J.W. was disappointed, not understanding why the authority she found could not be used. If nothing else, she thought, it could be used as a "hammer," an inducement to the father. ("If the money isn't returned, we may have to ask the district attorney to look into this.") J.W. took a chance and presented the memo to the senior partner. He read the memo, then asked, "Where did you get this?" J.W. told him *Proof of Facts*. He responded, "Proof of what?" Then he demanded that J.W. go to the law library with him and show him the books. On the way back to the office, the partner told J.W. that as soon as they got back, she was to order a set of *Proof of Facts*, that the associate was off the case, and that she was being promoted to be the firm's first paralegal.

The Price of Advocacy

Some paralegal students use their skills to help themselves. N.F., a paralegal, was involved in a child-support matter. Her ex-husband had never paid a cent in child support for their five-year-old son. The attorney she hired was expensive and N.F. was unimpressed with his work. About a week before the definitive hearing on the matter, the associate who was assisting on the case, met with N.F. and told her the firm had received a brief from the opposing counsel and the cases they cited appeared to work against N.F.'s efforts to collect support at this late date. N.F. was furious. These lawyers had worked for almost a year on the case and the best they can tell her now is, "According to your husband's attorneys, it doesn't look good." This was unacceptable.

Launching her own research, she discovered that the two cases the opposing counsel relied upon in the brief were quoted out of context. Both cases actually worked for her! Her attorneys must not have even read the cases. N.F. prepared a memorandum, met with her lawyers, and told them what to do. At the hearing, it was with mixed emotions that N.F. heard her lawyer argue the exact points she had prepared herself, as though they were the product of his own work. The judge ruled she was owed \$25,000 in back support. It was a hollow victory, however. N.F. should never have been forced to go to court, but the judge inexplicably would not grant her attorney's fees. When the attorney's bill arrived a month later, she was stunned - his fee for "representation" was \$21,000.

Seeing the Big Picture. Literally

Construction defect paralegals often assist in site inspections. They visit the site in dispute and, along with experts from both sides, examine the alleged defects. Sometimes they simply view the structure. Sometimes they observe "destructive testing," which involves an expert punching holes in walls, ceilings, and floors to determine construction techniques.

M.R., a paralegal, was attending the site inspection of a home involved in litigation. The claim was that the largest room in the house, the dining area, was inadequately ventilated. The area had vaulted ceilings and the expert for the plaintiff rambled on about the inadequacy of a design that left such a large area unvented. During the inspection, with experts, attorneys, and clients present, M.R. raised a simple question. Admitting she was not an expert, she asked if the area might possibly get better ventilation if a large, framed picture, which happened to cover a vent, could be moved. The expert was dismissive, arguing that there could not possibly be a vent there. After scrambling around for a ladder and carefully removing the large and expensive picture, the expert climbed up and placed his hand flat against the vent. Meekly, he stated, "Well, it is a vent. And it is working." The case was over, solved by a paralegal.

Advocating for a Paralegal

P.A. was very well-liked and respected by the staff and most of the attorneys at her firm. Unfortunately, the attorney to whom she was assigned had taken a dislike to her. One day, P.A. did something she had never done before: she forgot to calendar a hearing date for a client, an omission that resulted in an arrest warrant being issued. The client called and was furious. P.A. spoke with the client because the attorney she worked for had left for the day. P.A. felt terrible. She decided to prepare a motion to quash the warrant for filing the next morning. P.A. spent a sleepless night anticipating what the attorney would do when she found out.

Naturally, the attorney was very upset. She sent P.A. to court with the motion, a routine request, which was granted. P.A. did not see the lawyer again that morning.

After lunch, the managing partner summoned P.A. to his office. He closed the door and informed her that what he was about to tell her had nothing to do with her mistake. He wanted to let her know that her attorney had stormed into his office and demanded that P.A. be fired immediately.

The managing partner was dumbfounded. He had not worked much with P.A., but had always had a positive impression of her. The partner told the attorney he would get back to her about it after lunch. In the meantime, he started asking questions. He talked to attorneys, paralegals, secretaries, and even the receptionist. Everyone seemed to know two things. P.A. was a hardworking paralegal, and her attorney was regularly abusive to her. The managing attorney apologized to P.A., told her that the attorney no longer worked at the firm, and informed her that she would become his paralegal, at a higher rate of pay.

Advocacy's Reward

A paralegal may be involved in almost every aspect of the litigation process: research, investigation, interviewing, preparing documents, setting up depositions, and many other tasks. Your work will almost certainly have an effect on the outcome of the litigation process.

D.R. worked for a litigation law firm. One case involved a 70-year-old man whose wife was killed in a car accident by a teenager traveling 70-mph in a 35-mph zone. When the case began, the only witnesses (besides the defendant himself) were the defendant's two buddies, who had been riding in his car. They were not expected to be particularly helpful. During the pretrial stage, D.R. identified and interviewed more than 70 potential witnesses. They ranged from a minister, who had been frightened to see the teenager driving on the same road, to students and teachers, who would testify about the dangerous driving habits of the defendant. Great witnesses for the plaintiff's case.

In researching the case, D.R. also discovered an exception to the general rule that plaintiffs in

wrongful death cases cannot be compensated for “loss of consortium.” D.R. discovered case law establishing that if the death occurs a significant amount of time after the accident, compensation is allowed. At the settlement conference, the attorney walked in with statements and depositions from the 70-plus witnesses, informed the opposing counsel that loss of consortium was “back on the table,” and said that the client would settle for nothing less than the maximum amount under the defendant’s insurance policy. The two attorneys representing the defendant left the room to discuss the matter. After about five minutes they returned, agreeing to “settle” for the full amount if the loss of consortium issue was dropped.

As the attorney and D.R. walked out of the settlement conference, the attorney patted D.R. on the back, paused for a moment, and said, “This was as much your case as anyone’s. I want you to call the client to tell him.” That is the kind of difference a paralegal can make. With the right skills, and the right attitude, it is the kind of advocacy in which you, as a paralegal, will also engage.

Speaking of Literacy

At a court file clerk’s office in Jefferson County, Colorado, a handwritten sign was tacked up stating that only attorneys could view files. A paralegal was asked one day if he was a lawyer and responded that he was not. The clerk advised him of the rule and refused to allow him to view the file. The paralegal politely objected, pointing out that unless otherwise ordered by the court, all files were public record.

Making no progress with the clerk, the paralegal asked to speak to a supervisor. After the paralegal stated his position, the supervisor simply pointed to the sign and asked, “Can’t you read that sign?”

The paralegal, who had anticipated the problem, removed a folded copy of the statute regarding public records from his wallet, and asked: “Can’t you read this statute?”

After a few moments reviewing the statute, the supervisor instructed the clerk to allow the paralegal to see the file in question. A week later, the sign was gone.

This is advocacy. No one should stand in the way of the client’s rights. And you may have noticed another benefit: advocacy can be fun! It can make a paralegal’s job more interesting. On any given day, a paralegal may perform an act of advocacy that makes a difference for a client.

Advocacy is a very individual thing. What works for one paralegal may not work for another. The opinions on these pages should be considered discussion points. You may agree with the strategies. You may disagree. But think about them. They may help you become a more effective advocate.