ASSIGNMENT § 6.7 | THE ANSWER (OPTIONAL)

Students may switch sides in their assigned client's case for this assignment or they may use the following scenario to create an answer. Affirmative defenses and counterclaims may be included. This assignment may be required or assigned for extra credit by your instructor, but is otherwise optional.

Your attorney tells you she just took a new case. The complaint was filed more than two weeks ago, so the answer is almost due. She wants you to draft an answer and provides you with the basic following information.

The case is Ann Haverhill v. Gene Villipiano. The court case number is 20-1438. Your attorney wants you to admit Paragraphs 1 and 2, deny Paragraphs 3, 5, 6, and 7, and deny Paragraph 4 due to insufficient information. Your affirmative defenses are "Failure to state a claim upon which relief can be granted" and "Assumption of the risk."

Again, this assignment is optional unless your instructor requires it.

§ 6.8

Discovery

Exchanging Relevant Information

The following pages feature interactive study regarding discovery documents. Exercises will be completed in class, and the Assignments will be completed out-of-class, unless otherwise instructed. Try to be brief in completing the fill-in-the-blank questions but use additional paper if necessary. The exercises are primarily designed to encourage the thought process. They will not be graded.

THE DISCOVERY PROCESS

Evidence is needed by each party to a lawsuit to support its side of the case. Both parties attempt to gather the necessary evidence to win at trial. A paralegal is intimately involved in this process. Discovery is the vehicle by which both parties to a suit are entitled to certain facts, documents and other information while preparing for trial. Discovery serves three functions:

- *to clarify issues*
- *to eliminate the element of surprise*
- *to limit the length of trial*

Every attorney knows that lawsuits are won by hard work during the pretrial stage. The best and smartest attorneys use every tool available for the benefit of their clients, and the paralegal is one of the most powerful tools an attorney possesses. Also, when an attorney hears the term "pretrial," he or she

thinks "discovery." Thus, since the paralegal is very involved in discovery, and since most cases are won or lost during the pretrial stage, the paralegal's importance in litigation becomes obvious.

The four most used discovery techniques are:

1. *Interrogatories*
2. *Requests for admissions*
3. *Requests for production and inspection of documents*
4. *Depositions*

THE INTEGRITY OF THE DISCOVERY PROCESS

A judge in Hawaii spoke to a group of paralegal graduates about the proper use of paralegals in a law firm. During his talk, the judge addressed the paralegal's role in the discovery process, passionately making the following points:

Discovery Can Determine the Outcome of a Trial.
Paralegals must understand that the work they do during this stage is not incidental; it is critical to the results of litigation.

The Discovery Process is an Honorable Concept.
The purpose of going to trial is not to win, but to seek justice. For justice to prevail, the relevant facts should be exposed. The discovery process requires parties to disclose all relevant facts, even those facts that damage the party making the disclosure. Some attorneys pride themselves on their ability to avoid or circumvent the discovery process. This is unethical and corrosive to the litigation process.

Do not Compromise Your Ethics for Anyone.
As a paralegal, do not engage in obstructive or evasive techniques. Maintain your ethics and help your attorney maintain his or her ethics. The integrity of the litigation process is at least partially in your hands.

What can a paralegal do?
A paralegal asked to perform a task that seems evasive or deceptive should talk to the attorney about the situation. Maybe there is a reason for the conduct that is not apparent to the paralegal. At some point, the judge pointed out, the paralegal may need to ask the attorney a simple question: *Is this really the purpose of discovery?*

ASSIGNMENT § 6.8 | DISCOVERY DOCUMENTS

Based upon the same facts as the complaint previously prepared, create these discovery documents:

- *Interrogatories* (20 questions)
- *Request for Admissions* (20 statements)
- *Request for Production* (5 requests)

The following pages will instruct you in methods for creating the above documents. For this assignment, staple all the documents together. Keep track of your billable hours and attach your time sheet at the end of the documents.

§ 6.8(A) INTERROGATORIES

Interrogatories, from the word interrogate, are written questions to the other party or general requests for information relevant to the litigation. The other party must respond to interrogatories under penalty of perjury. While Requests for Admissions (discussed later) attempt to paint the opposing party into a legal comer, Interrogatories, instead, paint with a broad brush.

Any time after the suit is filed, either party may set forth Interrogatories to the opposing party. While all discovery must be relevant to the issues being tried, Interrogatories may be general and cover extensive matters, attempting to cast a broad net to obtain as many facts as possible.

> *Discovery Point*
> Discovery is intended to expose all relevant facts that will help the court reach a fair decision. Even if the information is damaging, the responding party must disclose it.

In the past, many jurisdictions required interrogatories and their responses to be filed with the court. Most jurisdictions have eliminated this requirement, although federal rules still generally require filing of the *certificate of mailing* or *receipt of copy*. After the caption and the "comes now" paragraph, many attorneys include specific instructions regarding the responses.

Although not required, these instructions may include such subjects as who responds to the interrogatories, how certain individuals are referred to, what certain terms or phrases mean, and other guidance. These instructions should also state the continuing nature of the interrogatories.

> *Continuing Nature of Discovery*
> Even after initial discovery deadlines have passed and initial discovery responses have been completed, the responding party must inform the requesting party if additional or subsequent information becomes known. For example, if a previously unidentified witness becomes known to the responding party after discovery is complete, that party is responsible for making this information known to the other side.