# CHAPTER 1

# THE ROLE OF THE PARALEGAL

## 1.1 HISTORICAL PERSPECTIVE

The desire to improve the efficiency and cost effective delivery of legal services prompted the birth and evolution of the paralegal profession. According to the National Association of Legal Assistants ("NALA"), "paralegals" or "legal assistants" first appeared in the late 1960s, although websites for other paralegal associations place the timeframe in the early 1970s.

Regardless of when the profession started, it is undisputed that prior to the advent of the paralegal, legal services had to be provided by qualified members of the State Bar, regardless of how straightforward the task. Consumers sought a means by which they could help themselves to perform routine tasks, potentially siphoning off a valuable source of revenue for attorneys.

Entrepreneurs, sensing an opportunity, created a niche market known as the legal typing service, which offered the consumer assistance in the preparation and typing of routine legal forms for consumers who wanted to represent themselves instead of hiring a "pricey" attorney. The risk soon became apparent. Consumers who relied on the legal typing services frequently proceeded at their peril, finding themselves either unable to file the paperwork prepared for them with the appropriate court, due to lack of compliance with court rules; or, losing a case which by rights they should have won.

Even more dangerous for the consumer, the legal typing service was an unregulated industry, since it was not a legally recognized profession; thus, neither the State Bar, nor prosecuting agencies, could do anything to control it. Furthermore, the investigation and prosecution of typing services that may have been engaging in the unauthorized practice of law proved unduly costly and difficult. If this trend continued, consumers could not only be victimized by these services, but worse, left without a remedy against these frequently unscrupulous opportunists.

The prospect of lost revenue for the attorney, coupled with the risk of consumers being victimized, caused the legal profession at large to react. Instead of billing at high rates for routine tasks, attorneys instead trained administrative staff to perform those tasks under their supervision. As clients reaped the rewards of cost savings, the attorneys avoided the potential revenue loss that would have befallen them had those clients gone to a "cheaper"

alternative such as the legal typing service. In addition, the benefit of better quality work, supervised by an attorney, resulted in a win-win situation for the legal consumer and the legal profession.

As the profession began to see the utility of having administrative staff perform these routine tasks, and clients continued to reap the financial rewards, the paralegal market expanded. Today, paralegals mostly work within law firms, supervised by licensed attorneys. Further, today's paralegals, with the benefit of greater opportunities for professional development, are performing increasingly more sophisticated work. Instead of simply filling out forms, paralegals now assist attorneys in factual investigation, preparation of pleadings, discovery and trial preparation.

Not surprisingly, given the value added which paralegals provide, the U.S. Department of Labor Statistics now anticipates that jobs for paralegals will grow much faster than the average for all careers through 2014.

## 1.2 ETHICAL RULES

With the development of the profession, came the creation of associations, similar to those affiliated with the State Bar, which provide educational development opportunities for paralegals and promulgate ethical canons to ensure the continued viability of the profession.

In California, paralegals have the opportunity to join local associations affiliated with the California Alliance of Paralegal Associations ("CAPA"). CAPA was formed in 1976 in San Francisco by three local paralegal associations: the San Francisco Association of Legal Assistants, the East Bay Association of Legal Assistants (Alameda County) and the Los Angeles Paralegal Association.

According to CAPA'S website, the organization is "dedicated to the advancement of the paralegal profession and the proposition that paralegals gain strength through alliance . . . [it] supports, encourages, and promotes an active relationship among its affiliated member associations, attorneys, national, state and local Bar Associations, and others in the legal community." It also serves as a "forum for the pooling and dissemination of varying opinions and professional experiences [and] supports formal education, training, continuing education, and voluntary competency testing, including without limitation the California Advanced Specialty examinations."

Business & Professions Code section 6450 (a) defines a paralegal as "a person who holds himself or herself out to be a paralegal, who is qualified by education, training, or work experience, who either contracts with or is employed by an attorney, law firm, corporation, governmental agency, or other entity, and who performs substantial legal work under the direction and supervision of an active member of the State Bar of California."

Tasks which can legally be performed by paralegals include, but are not limited to, case planning, development and management; legal research; interviewing clients; fact gathering and information retrieval; drafting and analyzing legal documents; collecting, compiling and utilizing technical information to make informed decisions and recommendation to a supervising attorney; and representing clients before state or federal administrative agencies, if that representation is permitted by statute, court rule, or administrative rule or regulation. [Bus. & Prof.C. §6450(a)]

The law is also clear as to what paralegals cannot do. A paralegal is not legally authorized to: (1) provide legal advice; (2) represent a client in court; (3) select, explain, draft or recommend the use of any legal document to or for any person other than the attorney who supervises the paralegal; (4) act as a runner or capper; (5) engage in conduct that constitutes the unlawful practice of law; (6) contract with, or be employed by, a natural person other than an attorney to perform paralegal service; (7) in connection with providing paralegal services, induce a person to make an investment, purchase a financial product or service, or enter a transaction from which income or profit, or both, purportedly may be derived; (8) establish the fees to charge a client for the services the paralegal performs, which shall be established by the attorney who supervises the paralegal's work. [Bus. & Prof.C. §6450(b)]

CAPA has developed the California Certified Paralegal Exam ("CCP"), which certifies that a paralegal has met the requirements of Business & Professions Code § 6450 (c).

The National Federation of Paralegal Associations, Inc. ("NFPA") has adopted The Code of Ethics and Responsibility to set forth the principles for ethical conduct to which each paralegal should conform. Many paralegal associations throughout the United States, including those in California, have adopted the concept and content of the NFPA's model code through the adoption of their own ethical codes.

The NFPA, although not California, has also adopted the American Bar Association's (ABA) Code of Ethics, as a further model for the conduct of paralegals within the legal profession. Particularly many of the confidentiality concerns which govern the conduct between attorneys and their clients likewise apply as between and amongst attorneys, paralegals and their clients.

In California, paralegals are instead bound by the applicable provisions of the State Bar Rules of Professional Conduct and Business & Professions Code §§ 6450–6456. These rules establish that paralegals are bound by the same prohibition against engaging in *ex parte* communications, defined as communications involving the courts or other adjudicative bodies or parties whom

the paralegal knows to be represented by an attorney in a pending matter, without the consent of the attorney representing the other party.

CRPC Rule 2-100 (B) applies only to persons employed at the time of the ex parte contact. Therefore, it is not a violation or ground for disqualification for counsel to interview an opposing party's former employees (who are not themselves represented by counsel) without opposing counsel's knowledge or consent. Notwithstanding this Rule, any ex parte communications should be limited to matter which is not subject to privilege. [*State Farm Fire & Cas. Co. v. Sup.Ct. (Taylor)* (1997) 54 CA4th 625, 652, 62 CR2d 834, 852]

A critical component of a paralegal's ethical obligations is awareness of and adherence to all legal authorities governing confidential information in the jurisdiction in which the paralegal practices. In California, "a paralegal is subject to the same duty as an attorney to maintain inviolate the confidentiality, and at every peril to himself or herself to preserve the attorney–client privilege." [Bus. & Prof.C. §6453]

Likewise, the paralegal shall avoid conflicts of interests and shall disclose any possible conflicts of interest to his or her employer as well as to the client. [CRPC 3-300]

One of the crucial ethical obligations of a paralegal is to clearly indicate the paralegal's title as such so as to avoid any miscommunication or misunderstanding with regard to the paralegal's role and responsibilities. The paralegal's title shall be included if the paralegal's name appears on business cards, letterhead, brochures or promotional materials. [Bus. & Prof.C. §6452]

Most importantly, a paralegal shall comply with the applicable legal authority governing the unauthorized practice of law. [CRPC 1-300] Simply stated, the paralegal's work MUST be supervised by an attorney and the paralegal is not authorized to hold him or herself out as an attorney.

In addition to defining the role of the paralegal, the California legislature has enacted regulatory schemes to govern a broad spectrum of non-attorney legal services. Contrasted with a paralegal, the role of legal document assistant or unlawful detainer assistant (akin to the legal typing service) is governed by California Business & Professions Code § 6400.

An unlawful detainer assistant is an individual who for compensation renders assistance or advice in the prosecution or defense of an unlawful detainer claim or action. [Bus. & Prof.C. §6400(a)] A legal document assistant is any person who is not exempted by Business & Professions Code § 6401 (relating to government employees or members of the State Bar or non-profit organizations, real estate brokers or financial institutions) who provides, or assists in providing, for compensation, any self-help service to a member of the

public who is representing him or herself in a legal matter. Self-help refers to the completion of legal documents in a ministerial matter, providing general published factual information, making published legal documents available to a person representing him or herself, assisting in the filing and serving of legal forms and documents. Legal document assistants must be:

- Registered in the county in which he or she maintains a principal place of business; and

- May not provide any kind of advice, explanation, opinion or recommendation to a consumer about legal rights, remedies, defenses, options, selection of forms, or strategies.

The remedies available to an injured consumer are set forth in Business & Professions Code § 6455 and provide that a person who violates the provisions of Business & Professions Code §§ 6451 or 6452 is guilty of an infraction for the first violation, punishable upon conviction by a fine of up to $2,500 as to each consumer with respect to whom a violation occurs, and is guilty of a misdemeanor for the second and each subsequent violation, which is punishable upon conviction by a fine of $2,500 as to each consumer with respect to whom a violation occurs, or imprisonment in county jail for not more than one year, or by both the fine and imprisonment.

In California, CAPA along with its affiliated local associations have affirmed the profession's commitment to a) improving the quality of their work, b) working efficiently, and c) continuing to educate paralegals about the importance of ethical conduct and professional responsibility within the profession.

As the role the paralegal play in the legal profession continues to expand mandating additional levels of responsibility, it is anticipated that mandatory rules of professional conduct will be adopted and enforced, which is a necessary step to enhancing public confidence in the legal community.

## 1.3 CERTIFICATION

The California legislature enacted legislation which does not require certification as a prerequisite to holding oneself out as a paralegal. Instead, as discussed infra, the statute defines a paralegal and provides for the minimum standards an individual must achieve, including among them apprenticeship or education, in order to describe oneself as a "paralegal" or "legal assistant." [Bus. & Prof.C. §6450]

Those minimum educational standards are any one of the following:

- A certificate of completion of a paralegal program approved by the American Bar Association;

- A certificate of completion of a paralegal program at a post-secondary institution that requires successful completion of 24 semester or equivalent units in law related courses approved by the Bureau for Private Post Secondary and Vocational Education;

- A Baccalaureate Degree or advanced degree in any subject together with one year of law related experience under the supervision of an attorney who has been an active member of the State Bar of California for at least three preceding years, or who has practiced in the federal courts for at least the three preceding years and a written declaration from the attorney stating that the individual is qualified to perform paralegal tasks;

- A high school diploma with a minimum of three years of law related experience under the supervision of an attorney who has been an active member of the State Bar for at least the preceding three years, or who has practiced in the federal courts for the at least the preceding three years, and a written declaration from this attorney stating that the person is qualified to perform paralegal tasks.

The CAPA website provides forms which can be downloaded to certify and attest to the completion of these requirements. CAPA also provides a mechanism for voluntary certification for those who pass the California Certified Paralegal Exam. To find out more and to register for the exam, go to *https://www.caparalegal.org/exam-faq*.

In addition to the certification of competency required by Business & Professions Code § 6450 (d), all paralegals must certify completion every two years of four hours of mandatory continuing legal education in legal ethics which shall meet the requirements of Business & Professions Code § 6070. Furthermore, every two years all paralegals are required to certify completion of four hours of mandatory continuing education in either general law or in a specialized area of law. Certification of these continuing educational requirements is to be made with the paralegal's supervising attorney, and the paralegal is responsible for keeping a record of his or her certifications. [Bus. & Prof.C. §6450(d)]

While certification is not a mandate, the NFPA, like CAPA, has, in an effort to accommodate the future growth and expansion of the profession, established a Paralegal Advanced Competency Exam ("PACE"). The criteria for taking PACE are an associate degree in paralegal studies obtained from an accredited institution, and/or ABA approved paralegal education program, and six years of substantive paralegal experience; or a bachelor's degree in any course of study

and three years of substantive paralegal experience; or a bachelor's degree and completion of a paralegal program with an institutionally accredited school and two years substantive paralegal experience.

Paralegals see the PACE and CCP exam as an enhancement, not only for their skills, but their marketability.

## 1.4 ARTIFICIAL INTELLIGENCE

Paralegals are at the cutting edge in the use of Artificial Intelligence ("AI"). Much of the paralegal's duties, such as summarizing depositions and trial testimony, organizing documents, and trial preparation can be performed by AI. But as is well known, AI can cause problems by hallucinating content and including outdated references. Paralegals can be the safeguards with AI to ensure that it is efficiently and effectively used while still providing accurate and timely information.

The California State Bar, when seeking public information on proposed amendments to the Rules of Professional Conduct, issued the following warning: "While the current rules already provide guidance and dictate how to use emerging technologies, including artificial intelligence (AI), due to the increasing proliferation of AI, as well as continued examples of fake or 'hallucinated' content, including outdated, incomplete or nonexistent legal authorities appearing in documents filed with the court, the Committee on Professional Responsibility and Conduct proposed clarifying amendments to the Rules of Professional Conduct," the State Bar of California said when seeking public input on the proposed amendments.

As such there are two proposed amendments which address Rule 1.1 on competence. The first adds AI as an example of relevant technology in an existing comment. The second incorporates a new comment to explicitly state that when using AI or other technology, "a lawyer must independently review, verify and exercise professional judgment regarding any output generated by the technology that is used in connection with representing a client." This is where a paralegal comes in.

Another proposed amendment addresses Rule 1.4 on communication with clients. It adds a new comment stating that when a lawyer uses AI or other technology that "presents a significant risk or materially affects the scope, cost, manner or decision-making process of representation," the lawyer must provide to a client "sufficient information regarding the use of technology to permit the client to make informed decisions regarding the representation." The comment also notes that this duty exists through the life of the representation.

Proposed amendments to Rule 1.6 on confidential information of a client expand the definition of "reveal" to include AI use and to Rule 3.3 on candor

toward the tribunal adds a new comment to address problems with AI hallucinations. According to the comment, a lawyer's duty "includes the obligation to verify the accuracy and existence of cited authorities, including ensuring no cited authority is fabricated, misstated or taken out of context, before submission to a tribunal, including any cited authorities generated or assisted by artificial intelligence or other technological tools."

A proposed amendment to Rule 5.1 on responsibilities of managerial and supervisory lawyers clarifies that lawyers in a managerial role should establish internal policies and procedures that govern the use of AI. A proposed amendment to Rule 5.3 on responsibilities regarding nonlawyer assistants also clarifies that a lawyer must give appropriate instruction and supervision to staff when using AI and other technology to provide legal services.

AI tools streamline a paralegal's document-heavy workflow, such as legal research, trial preparation, and contract review, saving up to 85–90% of manual processing time. Specialized legal AI assistants and document management platforms organize discovery, extract key clauses, and build chronological timelines.

Popular AI tools for paralegals fall into a few distinct categories based on their primary functions:

- eDiscovery and document review: These platforms are designed specifically to ingest thousands of native or scanned PDFs and parse them for relevance, privilege, and key facts.

- Contract analysis and management platforms: These are perfect for transactional paralegals, and can parse agreements and automatically generate summaries of obligations, deadlines, and key terms.

- All-in-one AI legal assistants: These are built on advanced generative AI (like GPT-4), specifically trained on verified legal databases to draft, summarize, and research.

- Litigation and Chronology Tools are designed to build structured medical chronologies and page-line transcript summaries from large, unstructured batches of medical or legal records.

Familiarizing oneself with the categories of AI tools and how to effectively use them saves time and improves the quality of work product. Always remember that some AI tools are not secure and there is a risk to revealing attorney–client communications and violating the attorney–client privilege. Check with your firm on what AI tools are suitable for maintaining confidentiality.