

THE EMPOWERED PARALEGAL

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EFFECTIVE, EFFICIENT AND PROFESSIONAL

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To Denise, without whom this book and most everything else would not have been possible, and (in alphabetical order) to Caroline, Ethan, Justin, Patrick and Tyler.

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INTRODUCTION

The Paralegal—An Essential Part of the Legal Team

Paralegals are more skilled, more professional and better educated than ever. As a result they are taking on more and more of the tasks formerly handled by attorneys.

The profession itself is rapidly growing. According to the United States Bureau of Labor Statistics, it is one of the fastest growing occupations in America, with an expected increase in positions of twenty-two percent between 2006 and 2016, much faster than average for all other occupations.¹ There are literally hundreds of training programs available for paralegals, ranging from certificate programs to full bachelor degrees. Many of these have obtained voluntary approval from the American Bar Association. Some states are considering licensing or certification requirements. Both the National Association of Legal Assistants (NALA) and National Federation of Paralegal Associations (NFPAs) offer certifications.

Yet, every workday thousands of paralegals and legal assistants leave their office feeling frustrated, overworked and under utilized. Much of this dissatisfaction flows from lack of paralegal empowerment and lack of understanding of the roles played by each member of the legal team. Let's take a look at how we would like it to be.

A. An Empowered Paralegal

The Smiths sit on packing crates in the disarray that is their new home. They smile as they toast each other and their new purchase, reflecting on

1. United States Department of Labor, Bureau of Labor Statistics, <http://www.bls.gov/oco/ocos114.htm> (Accessed February 26, 2009).

how smoothly the closing, in fact the entire purchase process, went earlier that day. As they contemplate unpacking, they are confident and secure in their new ownership because they know the deed and other paperwork were correctly done; the title thoroughly examined and the title insurance in place. Each step of the way they were part of the process, fully informed and impressed by the competence of John, their attorney's paralegal.

At each stage of the process, from their decision to sell their old home to the closing, John made them part of the legal team. Their initial contact with Attorney Morgan's office began with their interview with John, who was able to quickly obtain the information necessary for Anita Morgan to complete all the steps necessary to protect them legally. From the start, John explained the process in terms they could understand, including the likely time sequence. As the purchase and sale process progressed, the Smiths were confident that John understood their case and was keeping track of deadlines. Of course, John was careful not to give legal advice. It was clear to the Smiths where John's responsibilities ended and Anita's began. John's competence increased their confidence in Anita. They appreciated the efficiency of their meetings with Anita even though they did not know the extent to which Anita's application of her extensive legal knowledge to their case depended on John's interaction with them and with Anita.

The Smiths' closing would no doubt have occurred even if John were not as an effective paralegal as he was, but they are satisfied with their legal experience because they, John and Attorney Morgan all understood his vital role as a paralegal in Anita's office. John's role goes well beyond his knowledge of the law and legal ethics learned during his paralegal studies. John has acquired the ability to apply that knowledge as part of the legal team in a practical law office setting.

In addition to his legal knowledge, John has learned the essential skills of an effective, empowered paralegal:

- The effective, empowered paralegal manages time well. Generally, a lawyer sells legal services, rather than a product. The value of those services is measured by the amount of time spent fulfilling a client's legal needs. It is essential, therefore, that both the paralegal and the attorney organize themselves and their time to maximize efficiency. In addition, they must keep track of, and bill for, their time in a way that makes sense for the law office and the clients.
- The effective, empowered paralegal manages the calendar well. Missed deadlines result in dissatisfied clients, malpractice claims, and attorney disciplinary procedures. It is essential that both the attorney and the paralegal

be aware of upcoming deadlines and have a system in place to meet those deadlines without last-minute pressures that increase the likelihood of mistakes.

- The effective, empowered paralegal manages files well. The best crafted deeds, contracts, wills and pleadings are worthless if they cannot be found when needed. None of them can even be created if the necessary information cannot be located in a timely manner, or was never obtained in the first place. It is essential that both the paralegal and the attorney have a system in place and use that system for organizing, identifying, indexing and tracking files and the materials contained in the files.
- The effective, empowered paralegal manages clients well. The client is part of the legal team. Without the client there is no need for either the paralegal or the attorney and there is no money to fund the law office. However, the client is the member of the team who knows least about the law and her role in the team. It is essential that the paralegal and the attorney keep the client informed about what is being done for her, why it is being done and what she needs to do for the outcome to be successful.
- The effective, empowered paralegal manages the paralegal's relationship with the attorney well within the legal team. Both the paralegal and attorney must know and respect their roles and those of the other, their abilities and those of the other. It is essential that the paralegal understand what the attorney expects of him and the attorney understand what the paralegal can and cannot do for her.
- The effective, empowered paralegal knows and applies the principles of professionalism and thereby gains recognition of his status as a professional.

During thirty years as a litigator employing, training and teaching paralegals, I have gathered and developed clear, concise and easy-to-use techniques for empowering paralegals as a critical component of the effective legal team. I have used these techniques in my own law practice, in classrooms, seminars and workshops.

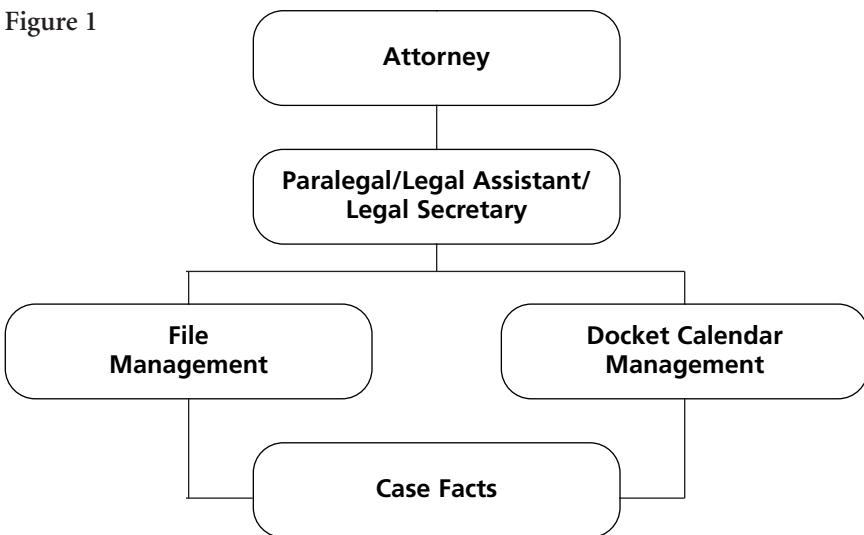
These techniques are now set out and explained in this practical guide to becoming *The Empowered Paralegal*. Each of the essential skills is examined in more detail, with management of time, workload, docket, files, clients and attorneys each being the focus of their own chapter. Professionalism must be part of every aspect of the paralegal's performance, so it will be part of each chapter and discussed extensively in the chapters on managing clients and managing attorneys. In addition, we will discuss the role of the paralegal, the attorney and the client in each of the areas and offer practical approaches to dealing with the issues that arise in a law practice. We will also examine some potential ethical issues and malpractice pitfalls.

In Chapter Seven, we'll bring the Five Essential Skills together in the context of managing a litigation file using Crucial Tools for Building a Better Trial. Finally, we will discuss briefly how each of the skills and tools can be used by paralegals in any type of law practice.

B. Understanding the Legal Team

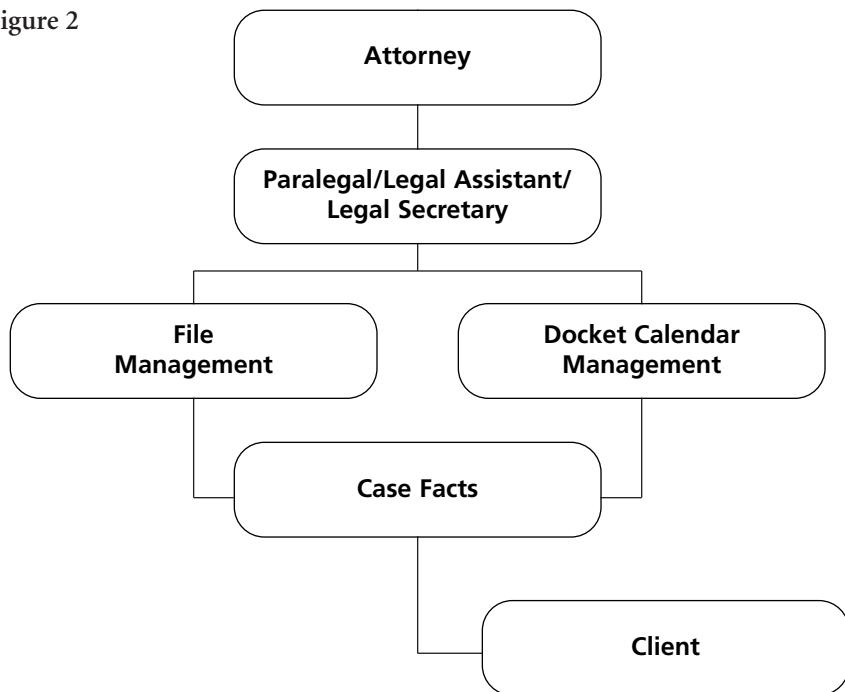
Our discussion has to start with an understanding of who the members of the legal team are and the role each member plays in relation to the legal matter being handled by the team. A diagram of the traditional concept of the legal team looks much like a corporation or government organizational chart with a rigid hierarchy of commands, responsibilities and duties.

Figure 1



This traditional view of the legal team suffers from several flaws, the most prominent of which is that it fails to recognize any role for the client. Every law office gives some importance to the client in the sense they acknowledge that without the client there is no case and no fee. This type of recognition results in only a minor change to the chart, as shown in Figure 2.

However, recognizing this importance of the client to the law office is not the same as recognizing the client as part of the legal team; rather it keeps the client apart from the team and, to a great extent, from the very legal matter which brought the client to the attorney.

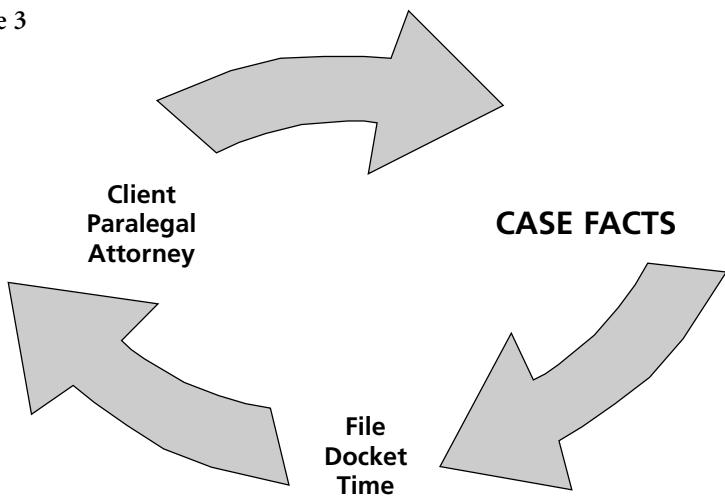
Figure 2

We will discuss the role of the client in depth in Chapter Five. The roles of the paralegal and the attorney will be discussed throughout this book and are the focus of Chapter Six. For now, it is necessary only that we be aware that in this book the client, the paralegal and the attorney are all members of the legal team. This conception of the roles of each member in the legal team differs from the traditional view. The conception used in this book is better in the following diagram (Figure 3) than the traditional diagram.

This diagram begins to account for these fundamental *interrelationships* and responsibilities:

- The interrelationship between the facts, the file, the docket and time;
- The interrelationship between the client, the paralegal and the attorney; and
- The joint responsibility and involvement of all members of the legal team for the facts, the file and the docket in achieving a successful outcome.

These interrelationships and responsibilities appear more complex than they have often been characterized and will be discussed extensively in this book. The goal for the effective, empowered paralegal is the ability to understand and to

Figure 3

manage each of the key factors. It's simpler than it sounds. We'll start in Chapter One by learning to manage your time.