



**LAWYER TO LAWYER MENTORING PROGRAM
WORKSHEET X
INTRODUCTION TO OFFICE PERSONNEL**

Worksheet X is intended to facilitate a discussion about the roles and responsibilities of paralegals, administrative assistants, and other office personnel and how to establish good working relationships with others in the same office who are support staff, colleagues, or senior.

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- Explain to the new lawyer each non-lawyer employee's role in the mentor's office/firm, including the employee's title, job duties, and relationship to the new lawyer (if any) if in an in-house mentoring relationship.
- Discuss the importance of having support staff on your team and treating them with respect.
- Share suggested "do's and don'ts" of dealing with support staff, colleagues, and those more senior than the new lawyer.
- If the new lawyer has an administrative assistant and/or paralegal, explain the types of task that are appropriate (and inappropriate) to ask each of them to do.
- If in an in-house mentoring relationship, discuss the office culture in terms of the types of tasks new lawyers are expected (although perhaps not told) to do rather than support staff. For example, if in an office where many lawyers share one administrative assistant, do the newer lawyers make their own changes to documents, make their own copies, etc. so that the administrative assistant can focus on doing those tasks for the more senior lawyers? Are new lawyers expected to type their own documents on their own computer and assistants expected to "format" them, or is there some other accepted way of doing things?
- If in an in-house mentoring relationship, discuss any considerations or prohibitions in asking support staff to put in time outside of normal office hours, including whether requests for overtime must be approved, whether overtime requests must only be made on a limited basis, how much advance notice is typically expected when asking staff to stay later than normal office hours, etc.
- If in an in-house mentoring relationship, discuss the specific skills and knowledge each support staff member has from which the new lawyer can learn or benefit.



- Read and discuss the suggestions regarding dealing with professional support staff in the attached excerpts. KIMM ALAYNE WALTON, *WHAT LAW SCHOOL DOESN'T TEACH YOU...BUT YOU REALLY NEED TO KNOW* (2000); Illinois State Bar Association and ISBA Mutual Insurance Company, *New Lawyer Survival Guide: Advice from the Trenches on How to Live Your Life in the Law*, 2003.
- Make suggestions about how to handle difficult situations where the new lawyer's administrative assistant or paralegal is not performing as expected. If mentoring in-house, explain any procedures that are in place to address this type of problem.
- Discuss the types of behavior that constitute the unauthorized practice of law in Ohio and to the extent possible, define the "practice of law." See the attached excerpt from *The Legal Assistant's Practical Guide to Professional Responsibility*, ABA Center for Professional Responsibility (2nd Edition). Also attached, *Land Title Abstract & Trust Co. v. Dworken*, 129 Ohio St. 23 (1934) and *Columbus Bar Assn. v. Thomas*, 109 Ohio St.3d 89 (2006).
- Discuss an attorney's ethical responsibilities regarding non-lawyer assistants. See Prof. Cond. Rule 5.3.
- Discuss an attorney's ethical obligation to prevent the unauthorized practice of law and provide specific tips on how to prevent non-lawyer personnel from inadvertently (or intentionally) engaging in it. See Prof. Cond. Rules 5.3 – 5.5.
- If mentoring in-house, discuss the office policies (if any) that are in place to prevent the unauthorized practice of law by non-lawyer staff.
- Share with the new lawyer appropriate ways to monitor the work product of support staff for which the new lawyer is ultimately responsible as an attorney.

RESOURCES

OHIO RULES OF PROFESSIONAL CONDUCT

V. LAW FIRMS AND ASSOCIATIONS

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RULE 5.3: RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed by, retained by, or associated with a lawyer, all of the following apply:

(a) a lawyer who individually or together with other lawyers possesses managerial authority in a law firm or government agency shall make reasonable efforts to ensure that the firm or government agency has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Ohio Rules of Professional Conduct if engaged in by a lawyer if either of the following applies:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved;

(2) the lawyer has managerial authority in the law firm or government agency in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

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RULE 5.4: PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except in any of the following circumstances:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;



(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement;

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed or retained the lawyer in the matter;

(5) a lawyer may share legal fees with a nonprofit organization that recommended employment of the lawyer in the matter, if the nonprofit organization complies with Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if any of the following applies:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation;

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

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RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.



(b) A lawyer who is not admitted to practice in this jurisdiction shall not do either of the following:

- (1) except as authorized by these rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law;
- (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer who is admitted in another United States jurisdiction, is in good standing in the jurisdiction in which the lawyer is admitted, and regularly practices law may provide legal services on a temporary basis in this jurisdiction if one or more of the following apply:

- (1) the services are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
- (2) the services are reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
- (3) the services are reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;
- (4) the lawyer engages in negotiations, investigations, or other nonlitigation activities that arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice.

(d) A lawyer admitted and in good standing in another United States jurisdiction may provide legal services in this jurisdiction in either of the following circumstances:

- (1) the lawyer is registered in compliance with Gov. Bar R. VI, Section 3 and is providing services to the employer or its organizational affiliates for which the permission of a tribunal to appear pro hac vice is not required;
- (2) the lawyer is providing services that the lawyer is authorized to provide by federal or Ohio law.

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secrets—don't violate confidences any more than you'd expect anyone else to violate *yours*). Or maybe your mentor needs help with an article or a speech. Be willing to step up to the plate for them as they do for you.

As you progress, keep your eye out for people behind you. As soon as you're a first year associate, you're more senior than the summer clerks! As Kathleen Brady says, "If you miss out on watching protégés succeed, you're losing out on one of the true joys in life. And it helps the profession. You hand off the ball to the next generation."

E. TAPPING INTO THE HIDDEN POWER STRUCTURE: SUPPORT STAFF ISSUES

If you've worked before, you know how valuable—and powerful—support staffers can be. If you *haven't*, you may tell yourself, "Finally, *I'm* not the lowest person on the totem pole—I've got somebody I can boss around!" Don't kid yourself. As Vermont's Pavel Wonsowicz points out, "The support staff is the backbone of the place." Hofstra's Diane Schwartzberg adds that "You can't bully people and be arrogant and get your way!"

Handling support staff well reflects on you in a whole bunch of ways: your ability to lead, accept responsibility, and deal with all different kinds of people (including clients). As lawyers at Goulston Storrs point out, "Treating support staffers with respect will get a summer clerk or new lawyer further than almost anything else besides good, competent lawyering."

Minnesota's Susan Gainen gets this across with her "Five Stages Of Relations With Support Staff."

STAGE ONE: On your first day of work, people are predisposed to think well of you. They are prepared to like you, to help you, and to invest in your success.

STAGE TWO: You acted like a jerk. Whether you were rude to a support staff person or to a colleague, you can almost always repair the damage if you are sincere in your apologies, and never, ever repeat the behavior.

STAGE THREE: You really *are* a jerk. Whether it's rudeness, incompetence, laziness or a tendency to make mistakes and blame others, you are riding for a fall. The support staff, which can smooth the wrinkles in your appearance, cover for your small mistakes and chuckle at your eccentricities, will now take

three steps back and watch you fall on your face. Real-life example: After an Associate General Counsel at a bank had been working for more than six months, staff began asking themselves questions like "Just how long should the learning curve be for remembering that each foreclosure needs a \$75 filing fee check attached to it, and that the lead time for a request is 24 hours?" and "When will he stop blaming us for his mistakes?"

STAGE FOUR: Singly and in groups they begin to approach their boss and your boss, saying "I can't believe that he/she did/didn't do (whatever)." This becomes a chorus, and everything that you've ever done that you weren't supposed to do—or that you've never done that you *were* supposed to—becomes sheet music for this group.

STAGE FIVE—THE PIRANHA STAGE: Not a pretty sight. Singly and in groups, they approach your boss and their boss and say "It's him/her or us." Now is the time to pack up your desk and sneak away into the night or stand on your desk and disembowel yourself with the Waterford letter opener you got as a graduation present. When weighing the value of a new *summa cum laude* graduate who quickly demonstrates an unerring ability to antagonize large numbers of valued employees against a group of irreplaceable experienced legal secretaries and paralegals, there is no choice. You're out.

As the "Five Stages" illustrate, mistreating the staff can be detrimental to your professional health.

Let's see what you have to do when it comes to dealing with support staff:

1. Remember that they can be helpful to you in a million subtle ways.

When you start out as a lawyer, there are a bunch of things you don't know about practicing law. It's fair to say that support staffers who've been with your employer for a while know more about being a lawyer than you do. Real estate paralegals, for instance, can handle closings themselves! The secretaries, receptionists, word processors, copy room staffers, office gophers and runners, the mailroom clerks—they can save your skin in a bunch of ways.

a. They can run interference for you.

"If your secretary likes you, and you tell them, 'I have to buy a 30th anniversary gift for my parents' or 'I have to run out for a cake

for my husband's birthday party,' they'll often tell someone looking for you that you're in a meeting," says Denver's Jennifer Loud Ungar.

If you're working in a public interest job, if a secretary or intake worker likes you, they'll field your calls. For instance, if it's a Social Security matter, they can answer people's questions. They know a lot of the answers. In the private world, if a client calls you, you *have* to return their call. They're paying. In the public arena, secretaries and intake workers can field your calls. They can make you or break you."

b. They can help you meet deadlines that you'd otherwise miss.

Lawyers at Goulston Storrs point out that "When you ask someone to stay late or deliver or copy something for you on a rush basis, your relationship with that person is likely going to be the one thing that determines whether that person will help you out. Lawyers with poor relationships with support staffers will suffer." As Brooklyn's Joan King says, "If you're respectful to the word processing staff, it pays dividends at 2 a.m., when your documents get pushed ahead of someone else's." One lawyer talked about having to get some important papers out to a client. He was certain that he'd missed the FedEx deadline. He went to the mailroom to check. The mailroom guy smiled, and said, "Come on. I'll help you out." He drove the lawyer to the airport, and took him to a secret entrance and got the FedEx off, even though the "technical" deadline had passed.

If you're a new lawyer and you're sharing a secretary with a bunch of other people, Hofstra's Rebecca Katz-White reminds you that "your work has the lowest priority. Some new lawyers have to share a secretary with four other people! You're low person on the totem pole, and that means that if you aren't nice to the secretary, you won't get *anything* done."

c. They can save you from looking stupid.

When you're a new lawyer, there are a lot of details that you don't know—but support staffers *do*. Pepperdine's Carol Allemeier

points out that you have to "Understand the difference between power and authority. Staff members can have a lot of power even if they don't have much authority. If you're comfortable talking to the boss's secretary, she can tell you when it's a good time or a *bad* time to talk to the boss. This can be very valuable information. You can also find out when (s)he will be out of the office and what their pet peeves are. Many an alum has told me that they asked for raises and scheduled their time off based on this 'insider information.' In addition, Georgetown's Marilyn Tucker points out, "Experienced support staffers will know the format documents should take, the number of copies required for different courts, and many other similarly critical details." Georgetown's Anna Davis points out that "If you're nice to the mail room guys, they'll look out for you. When you go to send something out, they'll tell you, 'Hey—you forget this on the envelope!'" One lawyer talked about her experience working for a "very intimidating" litigation department head. "He told me, 'I need this memo for the court from you. I only want two pages. Make it brief.' I researched it and wrote it, but it came out four pages long. Instead of editing it, I thought I could just single-space it to meet the two-page cutoff. When I took it to his secretary, she said, 'Oh, no—pleadings have to be double-spaced. Go and redo it.' If she hadn't told me that, I would have been toast."

d. They listen to the jungle drums.

If you want to know what's going on at work, your secretary is your first line of offense. As Wendy Werner points out, "They'll know before anybody which clients are coming and going, who are predominant business getters, what department generates the most revenue, who loses the most (and least) associates."



SMART HUMAN TRICK . . .

New associate at a large New York firm. He gets to know the entire staff in the first two weeks he's at work. The other associates laugh at him, but through this network he finds out that

the firm is thinking of adding an associate at its London office. He finds out who is doing the hiring, goes to them, and says, "Take me." No other associate had even **heard** about the plum assignment. It pays off. He gets the job.

2. Support staffers can be powerful in ways you can't imagine.

As St. Thomas' Michelle Fongyee points out, "Don't start with a hierarchy in mind, 'Me lawyer—you secretary.' Secretaries have a lot of power that new associates don't appreciate." Kentucky's Drusilla Bakert echoes that, saying, "Don't be deluded into thinking that just because your time is billable and theirs isn't that you're better than they are." Gunstler, Yoakley's Kelly Toole says that "your secretary was there before you, and she'll be there when you leave. She can be a great resource, or your worst enemy." If you treat secretaries badly, your work will suddenly be on the bottom of the pile. If you're rude to word processing people, "That brief you need? Suddenly they've got a project that's more important than yours!" says Drusilla Bakert. Florida State's Stephanie Redfearn points out that "Many runners are the children of partners or big clients. Attorneys shoot themselves in the foot when they treat runners badly. The kid goes home, and over dinner tells Daddy, 'So-and-so is a jerk.'" One recruiting coordinator commented that "The managing partner's secretary is the most powerful person in our firm. He relies on her for the inside scoop on everything that goes on in the office. Attorneys on her bad side are toast. She has the managing partner's ear. In some ways, he's closer to her than he is to his wife!" At another firm, the secretary for the head of the litigation department had the same role. As an associate in the department tells it, "She'll tell him things like, 'I don't like that associate. He's sneaky.' And that associate will have a black mark against him. And on the flipside of that, she controls the goodies. If the partner can't make a basketball game, she decides who gets his season tickets. She's a smart person to befriend." McDonnell Boehnen's Brad Hulbert points out that "The arrogant lawyer who forgets that secretaries are an essential part of the team is inevitably punished. 'Oh, I didn't know that you wanted the attachments actually attached to the brief!'" At

another firm, a senior associate was asked to leave because he lost two secretaries in a row.

Remember above all that secretaries *talk*. What they say about you helps develop your reputation, not just with other secretaries but with lawyers as well. If you treat the john as a reading room and spend a lot of time in there, your bathroom habits will soon get spread around the firm. At one firm, one partner was notorious for having lunch at his desk and putting his dirty wrappers and plates in his out box for his secretary to dispose of, rather than just dumping them in his wastebasket. That reputation followed him for years; every time his name came up, that's what people would think of first.

The bottom line: mistreating the support staff can kill you. They really do have that much power.



CAREER LIMITING MOVE . . .

Rainmaking partner in a large firm. He is renowned for treating support staffers badly, but because he's such a great source of business, his behavior is tolerated for a long time. One day, he is having a meeting in the firm's conference room at lunchtime with some clients. He tells his secretary, "Order a sandwich platter from the deli. For my sandwich, you know what I like. Tell them **no mayonnaise**. Got it? **No mayonnaise.**" Well, duh, yeah—she's not deaf. She orders the sandwiches, making a special point to the deli to leave the mayonnaise off of this partner's sandwich. When the sandwiches are delivered to the conference room, sure enough—his sandwich has mayonnaise on it. He gets on the intercom with his secretary and says—in front of the clients—"My sandwich has mayonnaise on it!" She apologizes profusely and explains that she did give the correct directions to the deli. She tells him, "I'll go down there and get you another sandwich." He snaps, "No you won't. You'll come in here and wipe off the mayonnaise yourself." There is stunned silence in the conference room, and she is in shock. What she **thinks** is, "You better hang on to that mayonnaise, because if you make me go in there, you're going to need all the lubrication you can get." What she **does** is to calmly pick up her purse and leave the office.

It's the last straw. The other partners ask this partner to leave the firm.

3. Don't force your superiors to choose sides between you and a support staffer.

As Wake Forest's Bill Barrett warns, "Young associates will be out before the partner's secretary leaves. Secretaries and office managers run the office!" Baker Donelson's Sue Hunter adds that "It's a bad idea to get too big for your britches. It's a lot easier to find good attorneys than it is to find good secretaries!" Dennis Kennedy advises that you "Learn your place in the pecking order. I used to joke in the hiring process that we should hire military veterans because they knew that you started at the bottom and earned your way up the ladder. Everyone at the office plays a different role and the value of those roles is not determined by title. If you've been at a firm for a few months and get into a situation where you force a partner to choose between supporting you or the secretary (s)he's had for ten years and relies on in ways you can't even imagine (until *you've* had a secretary you've relied on for ten years), I guarantee that a hundred percent of the time the partner will support the secretary. It's a showdown you can't win. Don't try to force it."



CAREER LIMITING MOVE . . .

A summer clerk. His first day at his summer employer. He walks into the managing partner's office while the managing partner is talking with his secretary. The summer clerk interrupts, saying, "Hello, Sir. It's nice to meet you. It's my first day . . ." The partner gives him a cold look and says, "I am in the middle of talking to my secretary, Miss Hathaway. She is more important than you will ever be."

4. Don't think that your superiors will respect you for lording it over the support staff.

Don't worry. Everybody at work assumes that you're smart and capable. You don't have to treat support staffers like dirt to burnish your

position. And if you *do*, it'll hurt you. Lawyers at Lord Bissell point out that "No matter how smart someone is and how technically savvy they may be as a lawyer, if they treat the staff with disrespect, they won't succeed." A lawyer at Shook Hardy adds, "Nobody wants prima donnas." Denver's Anne Stark Walker points out that "A few instances of brow-beating a secretary, or berating an office messenger, can do permanent damage to your reputation at the office."

5. If the firm culture is to treat staff badly and/or make sexist comments around them—for gosh sakes *ignore* the firm culture!

Don't take your behavioral cues from people who behave badly. As Lewis & Clark's Lisa Lesage points out, "Don't pay attention to how senior partners treat *their* secretaries!" Hamline's Vince Thomas adds that "Lots of people are short with staff, and sexist in a frat boy kind of way. It *always* comes back to bite you."

Remember, if you see attorneys at work treating their staffers badly, it tells you something you really don't want to know about them. And if you get into the good ol' boy mentality when it comes to handling "the girls," you're not just being stupid—you're opening up your employer to the threat of a sexual harassment suit, and I don't have to tell you that that's *really* bad news. Furthermore, if you flatter partners and then treat support staffers badly, it will expose you to everyone at the office as a phony. That's a bad reputation to have.

So follow a simple rule: treat support staffers with respect no matter how anybody else treats them, and you can't go wrong.

6. Remember that little things mean a lot.

Treat the support staff well from day one. The very first day at work, "Introduce yourself to them immediately and be certain to learn each person's name," says Marilyn Tucker. At one firm, a new associate brought in a box of muffins on his first day for all of the support staffers. "Now he gets everything he wants *immediately*," commented the firm's hiring partner.

When you're brand new, acknowledge to your secretary that you've got a lot to learn. As Arizona's Mary Birmingham suggests, "Say to your

secretary, 'I'm gonna ask you a ton of dumb questions, and I hope that's OK, because I'm trying to learn the ropes.'" At one firm, on her first day of work an associate walked up to her extremely experienced secretary and said, "Look, I know you've been doing this longer than I have. I know I probably can learn a thing or two about practicing law from you." As a colleague of hers pointed out, "It set a tone of mutual respect from the outset." At another firm, a new associate recalls that "I was warned that I'd been assigned a crotchety secretary who resented working for someone who was one-third her age. Knowing this, I took her flowers, and said, 'I look forward to learning from you. I know that you know more about the practice of law and this firm than I do.' After that, I had no trouble getting my work done. The fact is, when you're dealing with your secretary you've got to put your inflated ego aside. You can't assume you'll win pissing contests with secretaries, because you won't."

If secretaries at your office are referred to as "assistants," don't *ever* call them secretaries; they hate it.

Loyola's Pam Occhipinti tells you, "Never forget Secretaries' Day. It's *so* important to them!" Similarly, remember your secretary's birthday. If (s)he has a personal tragedy, send a condolence card and flowers.

Make a point of getting to know all of the support staffers, not just the secretaries. As Hamline's Vince Thomas says, "At my firm, our word processing department produced really long documents. Once in a while, instead of leaving things in the pick-up box, I'd walk my work down to them and spend a few minutes chatting. They obviously appreciated it. They were so used to having their contact with attorneys consist of people storming down to them and screaming 'You screwed this up!'"

When your secretary—or any other support staffer—does something for you, don't forget to say "thank you."

And finally, be appreciative of their time and sensitive to their workload. Be willing to pitch in and help them out when the situation calls for it. As Bart Schorsch writes in *The Student Lawyer*, "A few minutes helping to arrange a file or sift through documents might pay off for you later, either in experience or familiarity with a case or problem."



SMART HUMAN TRICK . . .

Junior associate at a large firm with several offices. After a year at one of the firm's offices, he gets transferred to a different office. On his last day, he buys flowers for his secretary. As he says, "I'd never had a secretary before, and I'd been very happy with her work. So I put a note on the flowers that said 'Thanks for being so kind to me.' Later that week, we had a firm-wide event with all of the lawyers and support staff. All of the female lawyers from my old office ran up to me and said, 'Wow! What a nice guy! You made her day!' This secretary told **everybody** about those flowers. I've never had any problem working with a secretary since. I honestly did it just because she was nice to me, but to tell you the truth, that was sixty bucks well spent—the goodwill it generated was priceless!"



CAREER LIMITING MOVE . . .

First year associate at a very large Midwestern firm. The firm handles enormous deals which involve tons of paperwork. One night, the paralegals and lawyers are there all night working on 200 document sets for a deal. A page in every set has to be replaced, and the first year associate decides that even though it's crunch time, it's beneath him to help take staples out of the document sets to make the replacement. Half an hour later, a mid-level associate walks into the room, and asks, 'What's going on here?' When the paralegals tell him about the mistake, he rolls up his sleeves to help. As one of the paralegals points out, "With that one simple act the mid-level associate got known as a person to work for. A simple act like that gets you further than all of the black letter law you know. The first year? He was black-balled."

7. When you're new, be friendly with support staffers, but be careful about having the shoulder your secretary cries on.

I've already stressed the importance of being friendly with support staffers, but as Hofstra's Rebecca Katz-White points out, "Be careful about being the one your assistant comes to to talk about personal issues. You can't afford to be in that role."

The fact is, if your secretary comes to you and leans on you for advice about his/her personal life, it's a minefield. Number one, it'll take up your valuable office time. Number two, your attitude about your secretary will change. But because you're human, you're flattered when someone wants your advice. Watch out! You need to be humane but wary. Give your assistant the time to get help, saying something like, "I'd love to help out but I'm not a professional," and refer them to a therapist. You can be understanding, but you can't be a psychologist.

This sounds cold, but remember that I'm only talking about the situation where you're a brand-new lawyer. After a while you'll have a track record with your secretary such that you're in a position to know that they'll be professional when they get their professional life together, and you can be much more flexible. But when you're starting out, you don't know that, so you can't take the chance. Think of trying to explain to your supervising attorney, "I'm sorry I'm going to miss your deadline, but my secretary has been crying on my shoulder about her divorce, so I didn't get a chance to write the memo and she didn't get a chance to type it."

8. Figuring out exactly what the heck it is that secretaries *do*, when you've never had a secretary before

As Carlton Fields' Eric Adams points out, "It's hard to learn delegation. When you get out of law school, you're used to being the delegatee."

What secretaries actually do varies from employer to employer, and their duties have evolved over time. As Akin Gump's J.D. Neary says, "They do different things now than typing!" For instance, they'll typically help you with your time sheets. They revise documents (although if you've only made small mistakes, it's probably faster to jump onto the computer and make the changes yourself. As St. Thomas' Michelle Fongyee points out, "Your secretary isn't sitting there waiting for you to come up with work. Sometimes it's easier to do it yourself."). You can

expect them to help out with distributions, putting one of each document into each packet. They can help draft, or edit if you dictate your documents. Eric Adams points out that "They're great proofreaders because they aren't lawyers. They'll catch stuff that you'll miss because you're too familiar with your own work." They also act as liaison with opposing counsel and they'll help out with scheduling.

You should also remember that your secretary is your only line of defense when people are looking for you. *Always* tell your secretary where you are, whether it's the library, a training session, the bathroom, *anywhere*.

Hofstra's Rebecca Katz-White suggests that you "be prepared to do your own word processing to avoid relying on a secretary. Ask your secretary to teach you shortcuts and function keys to limit the amount of time your secretary will have to spend on your work. Your secretary will appreciate it."

As a new lawyer you're likely to be sharing a secretary (if you get one at all). The person (or people) you're sharing with will be more senior than you. You have to be mindful of this for two reasons. Number one, as Rebecca Katz-White points out, "You need to be cautious not to step on the toes of the more senior person." Be conscious of when, and how, the other lawyers use the secretary. Also remember that the secretary will have influence with the lawyers with whom you share him or her. As one lawyer points out, "When I was a new associate, I shared a secretary with a powerful partner. I gave her a Christmas present and made absolutely sure that she liked me, because she had the partner's ear."

Finally, don't overlook perhaps the most valuable contribution your secretary can make: (S)he'll probably be plugged into the employer's grapevine, and can pass along to you valuable inside skinny. *Especially* if the news is bad—it concerns somebody's negative opinion of you, for instance—be sure to say thank you and not betray any emotion. You need to know what's being said, and if you punish your secretary for telling you, you'll discourage her from telling you anything else.

9. Learn how long administrative functions take, and act accordingly.

In order to make your deadlines, you need to know how long it takes to do everything that you don't do. Photocopying, faxing, word processing, envelope stuffing—they all take time. Ask people who regularly do these tasks for rules of thumb about how long they take. Once you know, you can build this information into your schedule so that you're not constantly racing to support staffers with a frantic last-minute rush project. Most people *don't* bother with this, and if you do, the support staff will notice and appreciate it.

If you're going to be giving support staffers work late at night, Denver's Jennifer Loud Ungar suggests that you "Let staff people know about it as soon as you can. Copy room people, word processors—they appreciate being warned. If you don't give them notice up front, you risk the possibility that nobody will be available to help you out." Furthermore, if you're going to need help after hours—typically after 5 p.m. or so—be *very* careful. Overtime work costs employers a lot of money, and it won't reflect well on your competence if you're routinely incurring overtime expenses.

10. Learn how to use office equipment, *especially* if you work for the government.

I know, I know—you're thinking, when am I going to get to the point where *I'm* the one who doesn't have to know how office machines work? The answer is: Not yet. When you're new, Michelle Fongyee suggests that you "Learn the fax and the copy machine, and expect to pick up the phone. Your secretary can't pick up every call, especially if (s)he works for other lawyers as well. Try to help out. Your secretary will appreciate it and your work will get done."

If you work for the government, your secretarial help is likely to be scant indeed. One government lawyer said that "I always do my own typing, copying, faxes, envelopes. Everybody here does. We have a secretary, but she works for us according to seniority, so when you're new you can't count on anything being done for you. But because everybody's in the same boat, you don't feel like a martyr."

11. How to handle mistakes your secretary makes

You're probably thinking that you're worried enough about your own competence; you don't want to contemplate whether or not your secretary can do a good job! But the fact is, your secretary is human, too. (S)he'll make mistakes. As Lewis and Clark's Lisa Lesage says, "Don't flame out over mistakes. Be constructive!" If you find that your secretary is routinely making mistakes, be careful how you handle it. Don't point fingers. Instead, *calmly* say something like, "The last two briefs I wrote went out without the right attachments. Partner X really chewed me out. How can we make sure that it doesn't happen again? Any suggestions for how we can change things?" Be careful about the changes you institute—if you're too anal you'll drive your secretary crazy. One attorney talked about a colleague at his firm who had been burned when his secretary put the wrong letters in envelopes and sent them out. After that, with every subsequent secretary he had, he made sure that before the secretary sealed any envelope, she'd have to bring it to him to see that she'd stuffed them correctly. His secretaries went *nuts* doing this. As the attorney pointed out, "You can be picky, but you have to be mindful of human nature."

If the mistakes keep happening—in other words, your secretary is an idiot—again, don't be blunt. As Chicago-Kent's Stephanie Rever Chu says, "Think hard before you complain—you don't want to get a reputation as being difficult to work with, otherwise you'll get bounced from secretary to secretary." Go to the office manager (if there is one) or a supervising attorney and say something along the lines of, "I'm having trouble getting my secretary to do X. Can you give me some advice about how I ought to handle it?" The facts themselves will tell anybody exactly where the problem lies; you don't need to editorialize. If you take this approach, you'll solve the problem without seeming like a jerk yourself.

Incidentally, remember that when it comes to work that goes through your secretary, *you're* responsible. It's effectively your mistake. As Venable, Baetjer's Stefan Tucker says, "If you send a letter to 'Dear David' and Richard Smith is the addressee, the rest of what you say is irrelevant. It's easy to blame your secretary. But the buck doesn't even stop with *you*—it stops with *your* boss." One lawyer talked about an incident where her secretary accidentally sent a draft document to opposing counsel. "I

looked stupid. I shouldn't have allowed it to be sent, even though it was technically my secretary who did it."

12. You're a woman, your secretary's a woman—you've got some special issues to confront.

When you're the same gender as your secretary, you've got a whole added dynamic going on. Especially if you're younger than your secretary, you're likely to be faced with a real authority problem. I talked with many young female attorneys who bemoaned the fact that their secretaries just wouldn't do their work. Unanswered phones. Messages not taken. Work put on the bottom of the pile.

How to handle it? You've got a fine line to walk. On the one hand, you can't be too buddy-buddy. You can't let them think that because you're friends, they can walk all over you. As one female lawyer pointed out, "After the secretary throws you a baby shower, it's hard to say, 'I need this by 10 a.m.'" If you've shared the details of your personal life, your dating fiascos, your family problems with your secretary, it's hard to assert authority. So you want to be friendly, but not friends.

On the other hand, you don't want to be the queen bee. Be sensitive to the possibility that your secretary doesn't view you as a "real boss." She might balk at being asked or told to do things by you. If you detect this, the best advice I heard was to be calm and straightforward about it. Humour helps. One young woman associate told of arriving for her first day of work, and having her secretary boldly say: "I don't like working with women attorneys." The associate laughingly replied, "Well, I don't really like working with women secretaries, but why don't we just take this one day at a time and see how it goes?" They got along great after that!

Georgetown's Abbie Willard recommends that you "Non-threateningly, and without anger, say, 'It won't serve either one of us if you don't do my work. It'll reflect on you. I know you're used to male bosses. But my work needs to get done. I understand it, I've had these issues myself.' Put it on the table!" Georgetown's Beth Sherman suggests, "Tell your secretary, 'I know you're really busy doing work for X, but I need my phone answered. How can we do that?'"

Hofstra's Caroline Levy tells you to "Recognize that what your secretary does is an area of expertise. You're working with them as a team. Show deference to what you can learn from her. Ask, 'Can you tell me how this is done?' or 'Do they send a courtesy copy of this to the judge?' Instead of saying 'Get this motion typed!' try, 'How does X like to start his motions?' If you inconvenience them, apologize! Say, 'I'm sorry, it took me too long to write this affidavit, can you handle it for me this afternoon? Are you working on anything else? I'll talk to the attorney you're doing work for right now . . . ' It's really a matter of being polite and tactful.'"

It may be that despite your best efforts, your secretary is dead set against working for a woman and there's nothing you can do to change that. One female associate talked about being assigned a secretary who wouldn't even acknowledge her existence. She tried being friendly, pleading, begging, cajoling—nothing. When the associate subtly brought up the matter to other associates, they breezily responded, "Oh, Diana hates working for women. She does that to every woman she's assigned to." The associate went straight to the secretarial supervisor and described the problem—it wasn't a surprise. The associate pointed out, "I wanted to work with her, but she just wasn't having it. Ultimately, the work's got to get done, and if she wouldn't do it—I needed somebody who *would*."

F. BIRDS DO IT, BEES DO IT . . . THE INS AND OUTS OF OFFICE ROMANCES

It's too easy to say "Holster your libido" when it comes to office romances, although it's true that abstinence is the only way to guarantee you'll never get into romantic trouble at the office. "Don't get your honey where you get your money" is certainly the standard to which you should aspire. As one lawyer put it, "Leave the office and take a cold shower!" I've heard story after story about romances gone bad, and sometimes they involve spectacular bad judgment. The partner married to a fellow partner who's pregnant, while he's having a romance with a female associate in another department at the same firm. People bragging about how many summer clerks they've "nailed." As author

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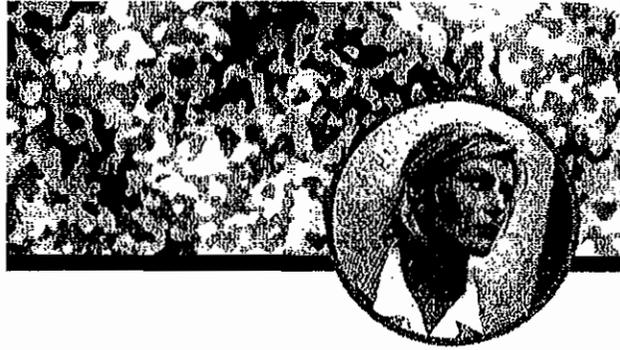
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R-E-S-P-E-C-T THE PROFESSIONAL SUPPORT STAFF

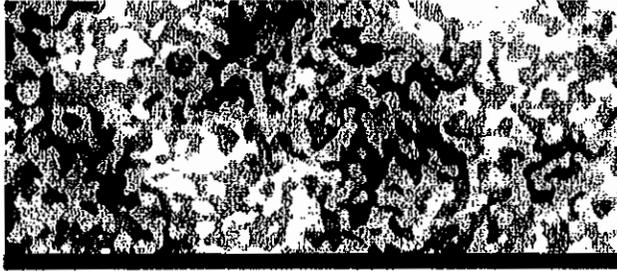
Remember that part of successfully working in any office, public or private, requires a team approach to accomplishing the goals of the organization. Professional support staff are just as important as attorneys in getting the job done properly. Professional support staff may include such persons as secretaries, paralegals and librarians.

With the proper team approach, and by treating others as you would want to be treated, you can form solid working relationships. Remember that working with staff is a two-way street—they are there to help you, but you must also help them by fostering a positive work environment.

The keys to a solid professional relationship with support staff include respect, consideration, good communication, and basic courtesy.

Respect – Support staff are on the front lines for attorneys and deserve the utmost respect. They have to deal with the public, clients, and all of the members of your office. Tasks often include answering phones, filing, transcribing dictation, copying, faxing, research, mailings, etc. These all require attention to detail and good organization, especially when working with multiple attorneys.

Consideration – Be patient with staff as you get to know one another. It takes a while for team members to appreciate each others strengths and weaknesses. Do not overload your support staff with tasks. When you present tasks, be mindful of time constraints and feelings. If you



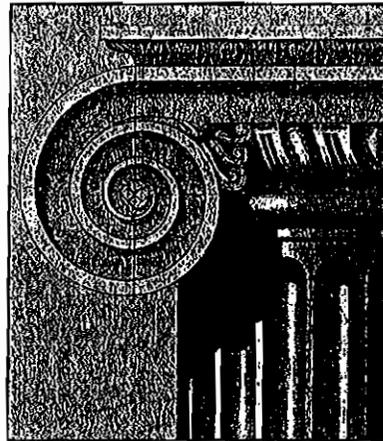
share support staff with other attorneys, remember that they all are placing similar demands on support staff, so make sure your timeframe for completing tasks is reasonable under the circumstances.

Good Communication – Do not expect support staff to read your mind. Give clear directions, write legibly, and prioritize your requests.

Basic Courtesy – Do not forget to say please and thank you. This may sound elementary, but when you treat your co-workers with respect, it helps foster a positive team environment. Little things, such as greeting your co-workers in the morning, showing concern for them, and praising a job well done are all ways to show courtesy.

The Legal Assistant's
Practical Guide to
**Professional
Responsibility**

Second Edition



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Chapter

FOUR

Unauthorized Practice of Law

♦ DEFINING THE UNAUTHORIZED PRACTICE OF LAW

Simply because a lawyer often performs a certain function does not necessarily make it the practice of law. Both lawyers and legal assistants often fill in blanks on standardized forms, handle routine telephone calls from clients, and maintain legal files. But legal assistants are rapidly becoming skilled at providing an ever-increasing range of law-related services, and therefore identifying which services require a lawyer's expertise is important.

Simply put, legal assistants may conduct any law-related services at which they are competent, provided they do not engage in the "unauthorized practice of law." The unauthorized practice of law (UPL) is the practice of law by someone who does not hold a current law license.

While this standard is easy to articulate, it is difficult to apply. One reason is that the definition of the practice of law varies from jurisdiction to jurisdiction and can be quite vague. Another reason is that the line between legal

services properly conducted by legal assistants and the unauthorized practice of law often has been a matter of contention between various groups in the legal community.

It is important to keep in mind that the ability to practice law legally is not a right, but rather a license granted by a government entity. Each jurisdiction sets its own requirements for a license. A license to practice law is, with limited exceptions, restricted to persons who have satisfied certain requirements established by the highest court of a jurisdiction, usually a degree from an accredited law school, a passing score on the jurisdiction's bar examination, and good moral character.

State regulations protect consumers by requiring a threshold level of skill and placing ethical constraints on lawyers in their delivery of services. Until recently, no parallel state regulations applied to nonlawyers; consumers who obtain legal services from nonlawyers do so without the benefit of state-imposed safeguards. In 2001, however, a new California law regulating paralegals became effective.¹ It remains to be seen whether other jurisdictions will follow suit.

▶ UNAUTHORIZED PRACTICE OF LAW RULES

ABA Model Rule 5.5 forbids a lawyer from assisting another, including a nonlawyer, in the unauthorized practice of law.² It does not define the practice of law, leaving that to the individual jurisdictions.³ As noted earlier, every jurisdiction has one or more laws prohibiting the unauthorized practice of law; in most places it is a misdemeanor punishable by fine or imprisonment.

According to Canon 3 of the NALA *Code of Ethics and Professional Responsibility*, a legal assistant shall not engage in the unauthorized practice of law. EC-1.8(a) of the NFPA *Model Code of Ethics and Professional Responsibility* provides that a legal assistant shall comply with the applicable legal authority governing the unauthorized practice of law. All of these rules allow a lawyer to delegate certain work to qualified legal assistants as long as the lawyer supervises the work and retains responsibility for the work product.

Because the legal assistant's work is dependent upon the lawyer's supervision, the lawyer must be in a position to assume responsibility for the work. Thus, for example, if the lawyer's license has been suspended, the legal assistant may not continue to perform duties on behalf of the lawyer that are part of the business management of a law practice, such as producing and communicating about pleadings, informing clients of upcoming hearing dates, or apprising clients of the status of their legal matters.⁴ A suspended lawyer should make plans for another lawyer to assume responsibility for the work of the legal assistant. Otherwise, the legal assistant could be guilty of the unauthorized practice of law.

▶ THE PRACTICE OF LAW

Activity that constitutes the practice of law is established by each jurisdiction, and the definition varies from jurisdiction to jurisdiction.⁵ While some jurisdictions have created precise definitions, with specific exceptions, many of the current definitions are open-ended, with courts deciding on a case-by-case basis whether a new form of delivery of legal services does or does not constitute the practice of law.

In either event, there are three types of activities that are most commonly cited as being the practice of law. They are: giving legal advice, representing a party in court, and preparing legal documents.⁶ Almost all activities that can be considered the practice of law are encompassed within these three categories, which are discussed below. This list, however, is not all-inclusive, and courts have held that other activities also constitute the practice of law.

▶ GIVING LEGAL ADVICE

The temptation to give legal advice is a challenge that almost every legal assistant encounters daily. During the span of a career, legal assistants become quite familiar with certain practice areas. They learn the answers to many common client questions.

It can be very tempting to respond to a client's inquiry when one believes that he or she knows the answer. This is especially true when a client is

kept waiting until a lawyer is available to answer the question. However, the response may amount to giving legal advice, and the legal assistant should refer the question to the lawyer with a statement such as "That's a question you should discuss with the lawyer."

Courts have traditionally applied three tests to determine whether conduct constitutes the giving of legal advice. The first test is whether the advice given is generally understood to require legal skill or knowledge.⁷ The second test is whether the conversation involves advising someone of their legal rights.⁸ Most courts recognize a standard exception: a response to a client's inquiry does not constitute the rendition of legal advice when the legal assistant merely acts as a conduit of advice between a lawyer and a client.⁹ If a legal assistant does not convey any thoughts or advice of his or her own, then he or she is not giving legal advice, and therefore, not practicing law. Thus, legal assistants delivering information pursuant to instruction and on behalf of a lawyer should always be certain to make it clear to the client that the lawyer is the source of the information.

The third test is whether the advice given is not normally given by a nonlawyer as part of another business or transaction.¹⁰ If someone who is not a lawyer dispenses law-related advice in furtherance of the ordinary course of his or her regular job, it may not amount to the practice of law.

For example, many bankers and financial planners regularly dispense advice that involves legal aspects of investment and tax situations. Likewise, real estate brokers routinely fill out preprinted real estate contracts on behalf of their customers as part of the sales transaction. Because all of these activities are part of the regular services provided by these professionals, they fall outside the boundaries of the legal advice test.

➤ REPRESENTATION IN COURT

The right to appear before a court and act on behalf of another is customarily restricted to licensed lawyers. There are many reasons offered for this restriction. First among them is that the rights and interests of the parties being represented may not be fully safeguarded when left in the hands of an untrained person.¹¹ It is also often suggested that the administration of



justice is more efficient when conducted by lawyers since they are skilled in the rules of evidence and substantive law.

The prohibition against nonlawyers acting on another's behalf is not restricted to trial or appellate arenas. In some jurisdictions activities such as answering docket calls and requesting continuances are also prohibited.¹² There is a split of authority as to whether a nonlawyer may represent a creditor at a creditors' meeting in bankruptcy proceedings.¹³

Legal assistants should determine what actions are permissible in their jurisdiction. If the legal assistant's supervising lawyer asks the assistant to make an appearance that is prohibited to nonlawyers in the jurisdiction, the legal assistant should insist that a lawyer appear instead.

There are some exceptions to the rule that nonlawyers may not appear in court. The most notable exception is the right of self-representation, which exists by statute in federal courts¹⁴ and has been held by the U.S. Supreme Court to apply in state criminal courts.¹⁵

The right of self-representation in state *civil* proceedings, though, is less concrete. Some jurisdictions allow individuals to represent themselves while others do not.¹⁶ The U.S. Supreme Court has not decided this issue.

Another exception is the permission that nonlawyers are granted to represent individuals before certain administrative agencies. Some jurisdictions permit lay representation before specified state agencies, though the courts and legislatures of many of these jurisdictions are divided on the issue.¹⁷ Nonlawyer representation before administrative or quasi-judicial bodies is generally not permitted when it would require the application of legal principles affecting the rights and obligations of the client.¹⁸

Although they have on occasion attempted to do so, states may not interfere with a lay person's right of representation before federal agencies located within their jurisdiction if such practice is permitted by federal law. For instance, a state may not prohibit nonlawyers who are registered to practice before the U.S. Patent Office from performing tasks associated with preparing and prosecuting patent applications, even though such activities constitute the practice of law in that state.¹⁹ Legal assistants

should examine each agency's policy on nonlawyer representation and consult with their supervisory lawyer before filing an appearance.

A final exception involves nonlawyer representation of corporations. This exception can seem puzzling because corporations are not individuals. Corporations are creatures of statute and are separate legal entities from the persons who form them. As such, they have no inherent right of self-representation.

Jurisdictions that permit corporations to represent themselves require them to appear through an officer or employee (lawyer or nonlawyer) and usually only when representing the corporation on a matter involving its own business.²⁰ Other jurisdictions forbid corporations to appear through nonlawyers, requiring them to be represented by a licensed lawyer.²¹ Each jurisdiction has its own UPL rules and exceptions. Legal assistants must therefore be fully familiar with the restrictions in their jurisdiction.²²

◆ PREPARATION OF LEGAL DOCUMENTS

Preparation of legal documents that affect the legal rights and responsibilities of others is an activity often restricted to lawyers.²³ Yet when legal assistants working in a law firm prepare promissory notes, deeds, wills, contracts, and other documents it is not considered the unauthorized practice of law. The reason lies in the supervisory role played by the lawyer, who must review the document and is ultimately accountable for its accuracy and effectiveness.²⁴ This requirement for supervision was created by ABA Model Rule 5.3 regarding a lawyer's responsibility to supervise nonlawyer employees. A legal assistant working for a lawyer in compliance with this rule can prepare documents without fear of UPL violations. It is the obligation of the legal assistant and the lawyer to make sure the work product is reviewed by the lawyer before it is filed with a court or agency or shown to a client or third party.

The negotiation that leads to the preparation of a legal document, is, however, a different matter. Thus, it has been held that it is the unauthorized practice of law when a nonlawyer employee of a law firm negotiates, on behalf of a creditor, the reaffirmation of a debt that may otherwise be dis-

chargeable in a bankruptcy case, even though a lawyer for the creditor later reviewed the document.²⁵

◆ OTHER ACTIVITIES

The practice of law includes a host of other activities, some of which, by statute or custom, may be performed by legal assistants in certain jurisdictions. For example, in Wisconsin and Kentucky, legal assistants may attend real estate closings on behalf of their employing lawyers,²⁶ while in South Carolina it is impermissible for a nonlawyer to handle a closing.²⁷ And while in some states a legal assistant may attend a deposition in place of a lawyer, New York, Oregon, and Pennsylvania forbid this practice.²⁸

Unfortunately, there are few bright lines to guide legal assistants through the maze of various jurisdictions' rules, case law, and ethics opinions. Before a legal assistant undertakes a new task, he or she should check the rules of the jurisdiction to confirm that the activity is not the practice of law.

◆ MISREPRESENTATION OF STATUS

Misrepresentation of one's status is a form of UPL. The ultimate purpose of all rules of professional conduct is the protection of the public. If a client is misled to believe that a legal assistant is a lawyer, the client will expect the legal assistant to be able to take certain actions to advance his or her case that the legal assistant may either be insufficiently knowledgeable to undertake or expressly prohibited from taking. Such misunderstandings, whether occurring innocently or as the result of deliberate deception, may result in harm to the client and damage to the reputation of the legal profession.

In order to prevent such misunderstandings from occurring, the legal assistant should always disclose the fact that he or she is not a lawyer during initial contact with clients or potential clients.

In addition, because persons who receive a letter on law firm stationery may assume that the person signing the letter is a lawyer with the firm, a legal assistant should always sign correspondence by indicating his or her

position with the firm. Failure to do so constitutes misrepresentation of one's status, which is the unauthorized practice of law.²⁹ Such misrepresentation also may lead to severe economic results for the law firm, as in the case of a class action settlement related to alleged violations of the Fair Debt Collection Practices Act.³⁰

▶ NONLAWYER CONTRIBUTIONS ENCOURAGED

Although unauthorized practice of law prohibitions do set limits on a legal assistant's activities, the role of legal assistants in the delivery of legal services is constantly expanding. There are many situations in which a legal assistant's efforts can help lower legal costs and increase public access to legal services.

The ABA Commission on Nonlawyer Practice undertook a nationwide study of the evolving role of legal assistants.³¹ After extensive research, numerous public hearings, and careful deliberations, the ABA Commission came to the following conclusions relating directly to nonlawyer practice:

1. *Increasing access to affordable assistance in law-related situations is an urgent goal of the legal profession and the states;*
2. *Protecting the public from harm from persons providing assistance in law-related situations is also an urgent goal;*
3. *When adequate protections for the public are in place, nonlawyers have important roles to perform in providing affordable access to justice.³²*

Though the report and its conclusions have not been adopted as ABA policy, the Commission issued recommendations regarding nonlawyer involvement in the delivery of legal services. (See the sidebar on Recommendations of the ABA Commission on Nonlawyer Practice on page 33.)

In offering these recommendations, the Commission noted the extent of nonlawyer practice today and the expanding forms of nonlawyer activity in the legal field.³³ The Commission expressed hope that these recommendations would help jurisdictions address questions of increased nonlawyer practice and demands for access to legal services.³⁴

Recommendations of the ABA Commission on Nonlawyer Practice

- ▶ The Commission developed the following recommendations:
 - ▶ The American Bar Association, state, local, and specialty bar associations, the practicing bar, courts, law schools, and the federal and state governments should continue to develop and finance new and improved ways to provide access to justice to help the public meet its legal and law-related needs.
 - ▶ The range of activities of traditional paralegals should be expanded, with lawyers remaining accountable for the paralegal's activities.
 - ▶ States should consider allowing nonlawyer representation of individuals or state administrative agency proceedings. Nonlawyer representatives should be subject to the agency's standards of practice and discipline.
 - ▶ The American Bar Association should examine its ethics rules, codes, and standards to ensure that they promote the delivery of affordable, competent services and access to justice.
 - ▶ The activities of nonlawyers who provide assistance, advice, and research, authorized by statute, court rule, or agency regulation, should be contained, subject to review by the state judge whose authority the services are performed.
 - ▶ With regard to the activities of all other nonlawyers, states should adopt an analytical process for assessing whether and how to regulate various forms of nonlawyer activity that pose or are perceived to pose a specific jurisdictional concern.
 - ▶ The purpose of the analysis should include the risk of harm to the public, prevent whether consumers can evaluate providers' qualifications, and whether the net effect of regulatory activity will be a benefit to the public.
 - ▶ The highest court in a jurisdiction should take the lead in examining specific nonlawyer activity within the jurisdiction, with the active support and participation of the bar and the public.

CHAPTER SUMMARY

- ☑ Legal assistants may conduct any law-related services at which they are competent, provided they do not engage in the unauthorized practice of law (UPL).
- ☑ Every jurisdiction has one or more laws prohibiting the unauthorized practice of law; in most places it is a misdemeanor punishable by fine or imprisonment.
- ☑ The most commonly cited types of activities involved in the definition of the practice of law are giving legal advice, representing a party in court, and preparing legal documents.
- ☑ A lawyer may delegate certain work to qualified legal assistants as long as the lawyer supervises the work and retains responsibility for the work product.
- ☑ Legal assistants delivering information pursuant to instruction and on behalf of a lawyer should always be certain to make it clear to the client that the lawyer is the source of the information.
- ☑ If the legal assistant's supervising lawyer asks the assistant to make an appearance that is prohibited to nonlawyers in the jurisdiction, the assistant should insist that a lawyer appear instead.
- ☑ A legal assistant working for a lawyer can prepare documents without fear of UPL violations. It is the obligation of the legal assistant and the lawyer to make sure the work product is reviewed by the lawyer.
- ☑ The legal assistant should disclose the fact that he or she is not a lawyer during initial contact with clients or potential clients.

NOTES

1. See CALIFORNIA BUSINESS AND PROFESSIONS CODE Sections 6450 through 6456, available at <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=bpc&group=06001-07000&file=6450-6456>.

2. ABA MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.5(a) (2004).

3. In August 2003, the ABA House of Delegates adopted the Recommendation of the Task Force on the Model Definition of the Practice of Law, the first Resolution of which stated that "the American Bar Association recommends that every state and territory adopt a definition of the practice of law." See http://www.abanet.org/cpr/model-def/taskforce_rpt_429.pdf.

4. See *Matter of Thonert*, 693 N.E.2d 559 (Ind. 1998).

5. ABA MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.5 cmt [2] (2004). Also see http://www.abanet.org/cpr/model-def/model_def_statutes.pdf for a compilation of state definitions of the practice of law.

6. ABA/BNA *Lawyers' Manual on Professional Conduct* 21:8001, 8004 (12-22-1999).

7. *Baron v. City of Los Angeles*, 469 P.2d 353 (Cal. 1970); ABA/BNA *Lawyers' Manual on Professional Conduct* 21:8004-05, 8021 (12-22-1999).

8. *Kennedy v. Bar Ass'n of Montgomery County, Inc.*, 561 A.2d 200 (Md.App. 1989).

9. See generally CHARLES W. WOLFRAM, *MODERN LEGAL ETHICS*, 836-37 (1986).

10. ABA/BNA *Lawyers' Manual on Professional Conduct* 21:8001, 8004, 8007-09 (12-22-1999); see *State Bar of N.M. v. Guardian Abstract and Title Co.*, 575 P.2d 943 (N.M. 1978); *In re Bercau*, 78 N.Y.S.2d 209 (N.Y.App.Div. 1948).

11. WOLFRAM, *supra* n.9, at 829.

12. Advisory Committee, Mo. State Bar Admin., *Informal Op. 1* (1982).

13. See *Lawyers' Manual on Professional Conduct*, 21:8016 (12-22-1999).

14. See 28 U.S.C. 1654 (1994).

15. *Faretta v. California*, 422 U.S. 806 (1975).

16. The following cases discuss the right of self-representation in civil matters heard in state courts: *Colorado v. Dunlap*, 623 P.2d 408, 410 (Colo. 1981) (court may impose restrictions on right in order to maintain control in courtroom); *Dobbins v. Dobbins*, 216 S.E.2d 102, 103 (Ga. 1975) (right of self-representation guaranteed by Georgia Constitution); *Ann Arbor Bank v. Weber*, 61 N.W.2d 84, 86 (Mich. 1953) (right of self-representation guaranteed under Michigan Constitution); *Blair v. Maynard*, 324 S.E.2d 391 (W.Va. 1984) (right of self-representation in civil proceedings is fundamental right under West Virginia Constitution).

17. ABA/BNA *Lawyer's Manual on Professional Conduct* 21:8009 (12-22-1999). See *Bd. of Education v. New York State Public Employment Relations Bd.*, 649 N.Y.S.2d 523 (N.Y.App. Div. 1996); *In re Burson*, 909 S.W.2d 768 (Tenn. 1995).

18. ABA/BNA *Lawyer's Manual on Professional Conduct* 21:8009 (12-22-1999).

19. *Sperry v. Florida*, 373 U.S. 379 (1963).

20. ABA/BNA *Lawyers' Manual on Professional Conduct* 21:8020 (12-22-1999).

21. See, e.g., *Greer v. Ludwick*, 241 N.E.2d 4 (Ill.App. 1968).

22. The ABA Center for Professional Responsibility, in conjunction with the ABA Standing Committee on Lawyers' Responsibility for Client Protection has published a

compilation of state-by-state rules on the unauthorized practice of law. The 1994 SURVEY AND RELATED MATERIALS ON THE UNAUTHORIZED PRACTICE OF LAW/NONLAWYER PRACTICE includes a brief history of UPL, the ABA Model Rules for Advisory Opinions on UPL and state-by-state survey results concerning UPL definition, enforcement, remedies, and guidelines.

23. See, e.g., R.I. Sup. Ct., GUIDELINES FOR USE OF LEGAL ASSISTANTS, Provisional Order No. 18 (1983). But see, Arizona Code of Judicial Administration, Part 7, Ch.2, § 7-208: Legal Document Preparer (effective April 1, 2003), which permits individuals certified pursuant to that section "to prepare or provide legal documents, without the supervision of an attorney, for an entity or member of the public who is engaging in self-representation in any legal matter."

24. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 316 (1967). At least one court has referred to this process as the lawyer adopting the nonlawyer's work as the lawyer's own. Oregon ex. rel. Oregon State Bar v. Lenske, 584 P.2d 759,765 (Or. 1978).

25. In re Carlos, 227 B.R. 535 (Bkrcty.C.D. Cal. 1998).

26. See Wisconsin Ethics Opinion E-95-3 (1995) (the paralegal must be properly trained, instructed, and supervised, and the particular closing must be unlikely to involve issues requiring the presence of a lawyer) and Countrywide Home Loans Inc. v. Kentucky Bar Ass'n, 113 S.W.3d 105 (Ky. 2003) ("Laypersons may conduct real estate closings on behalf of other parties, but they may not answer legal questions that arise at the closing or offer any legal advice to the parties.").

27. South Carolina v. Buyers Service Company, 357 S.E.2d 15 (S.C. 1987).

28. Comm. on Professional Ethics of the Bar Ass'n of Nassau County, Op. 88-53 (1988); Legal Ethics Comm. of the Or. State Bar, Op. 449 (1980); Comm. on Legal Ethics and Professional Responsibility of the Pa. Bar Ass'n, Op. 87-127 (1987).

29. See, e.g., The Florida Bar v. Pascual, 424 So.2d 757 (Fla. 1982).

30. See Fry v. Hayt, Hayt & Landau, 198 F.R.D. 461 (E.D.Pa. 2000).

31. NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, A REPORT WITH RECOMMENDATIONS. American Bar Association Commission on Nonlawyer Practice, August 1995.

32. *Id.* at p. 207.

33. See 1994 SURVEY AND RELATED MATERIALS ON THE UNAUTHORIZED PRACTICE OF LAW/NONLAWYER PRACTICE at 33 for a state by state table of permitted activities and guidelines.

34. NONLAWYER ACTIVITY IN LAW-RELATED SITUATIONS, A REPORT WITH RECOMMENDATIONS. American Bar Association Commission on Nonlawyer Practice, August 1995 at 205.

35. *Id.*