PARALEGALS: ONE GIANT LEAP FOR IMPROVING CLIENT SATISFACTION

By Todd C. Scott, VP Risk Management

The business model for solo attorneys starting a new law practice has gone through many changes in recent years as lawyers explore new options such as working remotely, working as an independent contractor, or establishing a virtual law practice. At some point, many of these lawyers will also conclude that hiring a paralegal makes sense for the success of their law practice.

For those that do want to hire a paralegal, identifying the right candidate to work in your law practice is not always easy. For some attorneys, after looking at the process of finding a paralegal and negotiating a wage and benefits package while training them to work alongside you, they may conclude it is not worth the trouble. But many small firm lawyers who have decided to take on the additional help have been pleased with their decision, and have found that adding a paralegal may have been the necessary step to operating a thriving practice for the long run.

“Having a good paralegal frees me up to be a better lawyer,” says Ann Barker, a sole practitioner who operates a family law practice in Owatonna, Minnesota. “I want to be a lawyer, not a bookkeeper. Doing it all is not very attractive to me.”

Barker also points out that for the attorney’s overall health and wellness, “Having a paralegal means you don’t have to be tied down to the law practice 24/7. You need to have a life, and taking it all on yourself will burn you out and shorten your career as a lawyer.”

If you have decided to hire a paralegal, where to find a good one can become a difficult first step. Only four states – Florida, North Carolina, Ohio and Texas – have state approved certification programs, so finding an individual who’s well-trained may require contacting the post-secondary institutions in your jurisdiction that offer educational programs and training for paralegals.

For years, programs for training students in paralegal studies have been available at colleges and universities, as well as other post-secondary institutions that offer programs in foundational skills, legal writing, civil procedure, office technology, and practice area topics. The goal is to train the paralegal in basic legal studies so they will be able to hit the ground running when they get into their new law firms.

Jeanne Kosieradzki, an attorney who is the Program Director of the eDiscovery Certificate program at Hamline University in St. Paul, Minnesota, and has been a professor of legal studies for over 20 years, points out that not all paralegal studies programs are alike.

“Employers often want paralegal graduates from an ABA certified program,” says Kosieradzki. Hamline University’s paralegal studies program is ABA certified, which requires the program staff to apply for certification every seven years. The certification process also requires Hamline to show the ABA the program’s class syllabi, extensive background information about the program
educators, student feedback, and that they are staying current with ABA standards—especially in areas that may be hard to meet like legal technology training.

Some lawyers, like Barker, would rather identify potential candidates for paralegal positions from an office-temp agency that may already be familiar with their law practice, as well as the personality type of the attorney.

“They do the screening,” says Barker. “I pay a premium to the temp service, but then the employee is on their payroll for the first 90 days, and I don’t have to worry about the having the payroll structure set-up.”

After the first 90 days are over, the lawyer usually has the option of offering a position to the candidate, or letting them go—another task that the agency will take care of.

Kosieradzki also points out that lawyers in small firms may have an advantage when attempting to hire a well-qualified paralegal.

“Small law firms tend to offer more flexibility to paralegal candidates, making them attractive workplaces to the most qualified candidates,” says Kosieradzki. Owners of small law firms may get the benefit of hiring well-qualified paralegals for less pay, and in return, the employee may expect to receive more flexible work hours, or working from an office that is closer to their home.

Paralegal compensation can fall into a range that most often depends on the amount of education and training the paralegal has received. Work experience and the location where the paralegal is employed are also factors that often determine the rate for which the paralegal is compensated.

In 2013, the Bureau of Labor Statistics reported that paralegal compensation fell in a range from $29,460 to $74,870, with the median salary for a paralegal being $46,680.

Of course, what you pay your paralegal can depend upon many variables including the practice area you specialize in, what types of tasks and duties they take on as your assistant, or even how good they are on the phone with your clients.

Paralegals are often thought of as being in the first line of defense when dealing with client matters, and their demeanor with clients will often reflect the treatment they receive from the attorneys they work for. Take time to talk to your paralegal about the frustrations they encounter and the problems they see. You’ll find that their instincts are good ones: to look out for what’s best for your law firm, to make sure the clients are being treated fairly, and that the boss is happy.

Written Engagement Agreements: Tools for Defining the Client Relationship

By Todd C. Scott, VP Risk Management

For years risk management advisors have stressed to lawyers the importance of a written engagement agreement when contracting with a client for legal services. Having a written agreement in place is critical for preventing misunderstandings between the lawyer and client about what services will be performed, the scope of the agreement, the fee the client will be charged, and how the lawyer expects to be paid.

The message about the importance of a written agreement has been broadcast so loud and so clear, that for some attorneys it often comes as a surprise when they learn that memorializing the proposed legal services in writing is not always required under the ABA Model Rules of Professional Conduct. There are many circumstances where an agreement between a lawyer and client must be in writing to be valid, but the initial agreement to work on behalf of the client doesn’t necessarily have to be documented.

The reason for this discrepancy actually makes sense when considering the public policy the drafters of the ABA Model Rules of Professional Conduct had in mind when considering the requirements for delivering legal services. It has always been, and continues to be, essential that for a lawyer to effectively serve the public—sometimes on the fly in an environment that requires quick thinking on their feet—the lawyer must be free to provide legal advice, even when a written contract between the lawyer and the client is impractical.

The situations where a written engagement agreement between a lawyer and client is required are very clear in the professional rules. Written engagement agreements are required when a contingency fee agreement between the lawyer and client is in place [Rule 1.5(c)], if there is a division of fees between lawyers who are not in the

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same firm [Rule 1.5(e)(2)], or where the fee charged may be considered entering into a business transaction with a client [Rule 1.8(a)].

Although a written engagement agreement may not always be required under the rules of professional conduct, a written agreement is an important and critical tool to lessen the risk of a malpractice claim. Defining the scope of the engagement in writing memorializes the attorney-client relationship. Moreover, the document becomes a useful tool for the ongoing management of the relationship with the client, especially if the client misunderstands the lawyer’s role in the matter or fails to comply with an important responsibility that they have assumed.

“It is important for attorneys to remember that the attorney-client relationship is one that is continually evolving.”

Although there are many considerations about what should be included in the engagement agreement, there are a few provisions that every written engagement agreement should address:

• **Identify who is the client.** It seems very basic, but the written engagement agreement should clearly identify the client who is contracting for the legal services. There are many situations in family law, estate planning, personal injury claims and transactional matters where it can become confusing to both the lawyer and the client if the identity of the client is not clearly defined in the written engagement agreement.

• **Identify the scope of the engagement.** If not clearly identified at the outset of the legal matter, critical misunderstandings between the lawyer and client may develop where the client and the lawyer are not in agreement about the scope of legal services that the lawyer has been retained to perform. Most often it arises in matters where the lawyer has attempted to limit the scope of involvement in a legal matter but the client is expecting broader involvement – sometimes in tangential matters that have little to do with the original purpose for which the client was seeking legal services.

• **Identify the lawyer’s fee and the terms of payment.** A significant number of malpractice claims arise in matters where there is a breakdown between the lawyer and client over fees. The written retainer agreement should address the specific fee that the client will be charged and how the client will be billed for the legal services. The lawyer should attempt to anticipate any circumstances where additional fees may apply – including items where the client has the responsibility to reimburse the attorney, such as case expenses – and address those circumstances as clearly as possible in the written agreement.

• **Identify any special circumstances for which the client would like to be forewarned.** The written fee agreement can be a very useful tool for educating the client about how the legal services will be performed. Special circumstances that the client would often like to know in advance may involve a variety of topics including: if the firm anticipates hiring an independent contractor to assist with the work, hiring local counsel, consulting with an expert in the field, storing data related to the matter in the cloud, fee arbitration requirements in the case of a fee dispute, and any expectations the lawyer has for the client concerning access and availability for regular communications.

As mentioned above, the written agreement can limit the scope of engagement on behalf of a client, however the limitation should be reasonable and it is mandatory that the client provides informed consent to the limitation of the engagement. [ABA Model Rule 1.2(c)]. For example, it may not be reasonable for an attorney to limit his or her participation in a client’s legal matter to a single phone consultation if the attorney knows that the scope of the matter is too complex to adequately advise the client on such a limited basis. What is “reasonable” in these circumstances often includes considerations involving the legal knowledge, thoroughness, skill and preparation reasonably necessary for the limited representation.

It is important for attorneys to remember that the attorney-client relationship is one that is continually evolving. Consequently, it may become necessary to occasionally update the written engagement agreement as the legal matter progresses to better reflect the changing relationship. Updating the engagement agreement is especially critical if both parties agree that the original terms of the engagement agreement no longer adequately defines the duties and responsibilities being assumed by the attorney.
Attorney Fred Friedman Shares Litigation Landmines with Webcast Viewers

By Michelle Lore, Claim Attorney

Litigator and educator Fred Friedman recently participated in MLM’s Practice Management Webcast Series in a program entitled, “Top Five Errors in Litigation Practice.” Friedman, who retired in 2014 after serving over 40 years as a Chief Public Defender in Minnesota’s 6th District, had advice for litigators looking to have success and avoid ethics traps:

• **Never promise a client a result.** Instead, tell the client you will work hard on their matter, you will be diligent, and you will spend the necessary time on their case.

• **Be a good listener.** Lawyers often “over talk,” a bad habit that comes when a lawyer is trying to impress the client or the judiciary about their extensive knowledge of the law. All the lawyer really needs to know is what the client needs, what the client’s situation is, and how the lawyer can help. “A lot of people just want to be heard.”

• **Procrastinators don’t make good lawyers.** If you procrastinate, don’t be a lawyer. Sometimes the problem of insufficient preparation is that the lawyer does not have a system of organization. Other times the lawyer simply has too much on his or her plate. If there comes a time when you are not prepared to proceed on a case, tell the judge you are not ready and explain why. It’s better than going forward when you are not prepared and possibly making an error that will hurt your client’s case.

• **Avoid neglecting files.** Attorney neglect often involve simple things like failing to return phone calls from clients or opposing counsel, failing to draft or answer discovery, failing to investigate or prepare a case, or failing to provide information requested by clients. To avoid neglecting a file, develop a questionnaire for each case that includes information on the client, the client matter, and a checklist of what needs to be done.

• **Don’t talk yourself into thinking a deadline isn’t real.** Some lawyers talk themselves into thinking that a deadline isn’t real or it isn’t important so they don’t make much effort to comply with them. Failure to timely file a lawsuit is an easily preventable mistake when the right office procedures are in place.

• **Failing to document your file is a big problem.** Some lawyers simply don’t know how to document their files, while others are just too lazy or too busy. If that is the case, the lawyer has to adjust or get help. It is important for lawyers to document their client files – including advice the lawyer provides, decisions the client makes and discussions surrounding the scope of representation.

• **Representing multiple parties on the same matter is asking for trouble.** While in some jurisdiction representing multiple parties in the same matter is prohibited, Friedman advises against it in almost all circumstances. Even if clients say that their interests are the same, often it is not true. If you do decide to take on the multiple representation, then you ought to be tough enough to withdraw if a conflict arises.

• **If you are new and a solo attorney, find a mentor.** Make a list of people you can go to for advice, people for whom you can buy a cup of coffee, someone you have something in common with.

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