

Paralegals – Today’s Indispensable Legal Professional

By Jin Lew

One summer, my senior paralegal called me to discuss a client’s matter, and in the midst of that call, exclaimed, “It’s National Paralegal Day!” That revelation took me by surprise and after apologizing for my ignorance and oversight, I did some checking. In 1988, Governor George Deukmejian had officially proclaimed “California Paralegal Day.” Soon after, “National Paralegal Day” came into existence, and in 2024, was recognized in the United States Congressional Record. I do not claim to know of any tradition associated with this Day, but a sincere gesture of gratitude is strongly suggested.

Whether a new or seasoned attorney, we know all too well the issue of “bandwidth,” the limitations on time and resources that affect the ability of the attorney to provide effective representation of the clients. The obvious solution to bandwidth issues has been to get help. Help

in its various incarnations ranging from associate attorneys, partners, of counsel, clerks, interns, secretaries, and of course, the paralegal, each present with its own unique set of benefits and consequences. This article takes a deep dive into paralegal professionals, understanding their role in contemporary law firm practices, and maximizing the benefits of the attorney-paralegal relationship.

In California, in the late 1960s, paralegals originally known as legal assistants took root in response to a gap between the accessibility of legal services and underserved communities. Since then, the paralegal profession continued to evolve and expand. By the 1990s, the paralegal would become a fixture in “Big Law” as a revenue-generating resource chargeable to their clients. Then, in the year 2000, California adopted legislation directly regulating the paralegal profession. According to the American Bar Association, to this day, California is the only state in this nation that directly regulates the practice of the paralegal profession.

Qualifying as a Paralegal

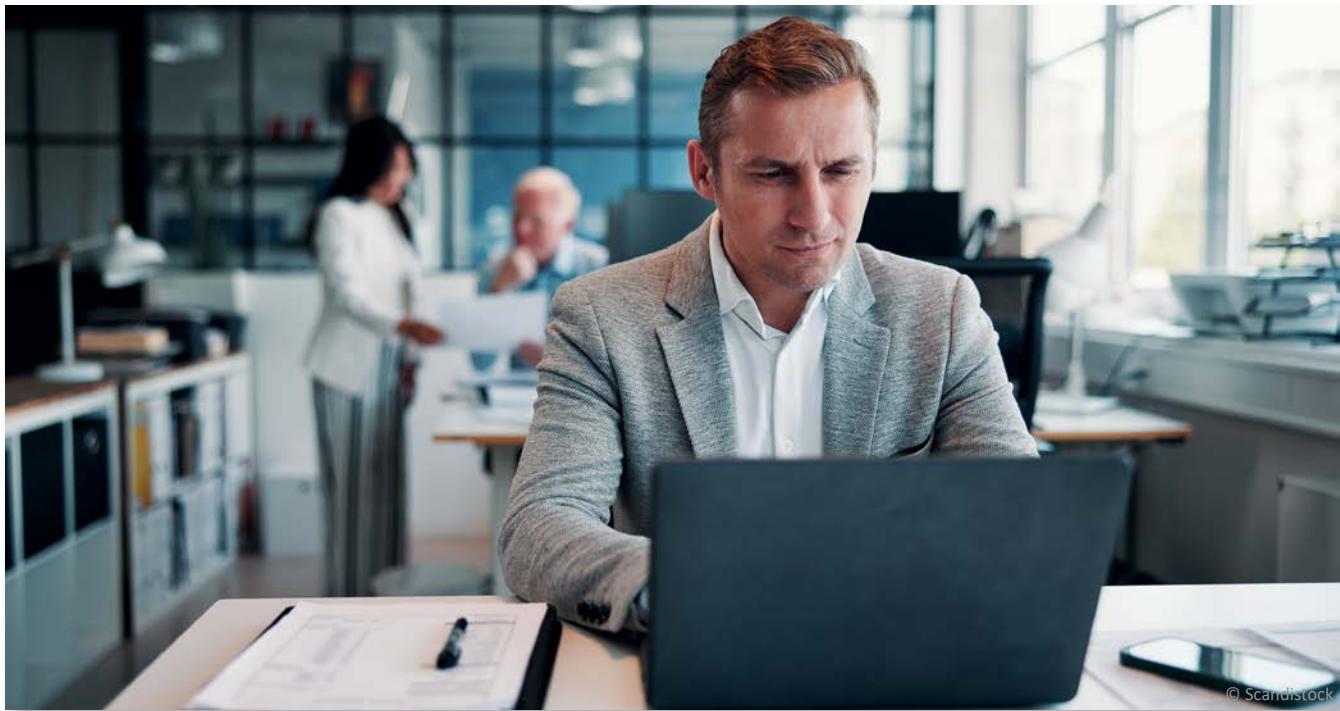
California Business and Professions Code sections 6450 through 6456 codify the practice of the paralegal, defining the profession, the requirements to become a paralegal, the paralegal’s scope of practice, and the disciplinary consequences for regulatory violations. According to this legislative scheme, particularly under subdivision (c) of section 6450, there are in effect several ways to become a paralegal:

1. Completing an ABA approved paralegal program;
2. Completing a paralegal program offered by an accredited college or institution;
3. Obtaining a bachelor’s degree; completing one year of law-related work under the supervision of an attorney with an active license for the last three years; and a signed attorney declaration stating the person to be qualified to perform paralegal tasks; or,
4. Obtaining a high school diploma; completing three years of law-related work under the supervision of an attorney with an active license for the last three years; and a signed attorney declaration stating the person to be qualified to perform paralegal tasks.

California is home to a plethora of public and private teaching institutions certified by the ABA and other similar accredited organizations including the University of California and the California State University postsecondary education systems. The length of time for the completion of these programs typically ranges from six months to two years. The cost for these programs is widely variable from a few thousand dollars to nearly twenty thousand dollars in some instances. Given the substantial investment of time and money associated with such accredited programs, on-the-job training under an experienced attorney’s supervision followed by an attorney declaration offers an attractive option for those seeking to become a paralegal. Of course, finding such a circumstance can present its own challenges.



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The Paralegal's Scope of Practice

Subdivision (a) of section 6450 of the Business and Professions Code specifically delineates the "tasks" that paralegals are legally permitted to perform as follows:

1. Case planning, development and management;
2. Legal research;
3. Interviewing clients;
4. Fact gathering and retrieving information;
5. Drafting and analyzing legal documents;
6. Collecting, compiling, and utilizing technical information to make an independent decision and recommendation to the supervising attorney; and
7. Representing clients before a state or federal administrative agency if permitted by statute, court rule, or administrative rule or regulation.

Thus, California law has extended paralegals meaningful liberality in the scope of services that the profession can perform, much of which had traditionally been within the sole province of the responsibility of the attorney. Establishing which "tasks" will be included as part of the paralegal's scope of practice in a law office is a function of the competency and ambition of the paralegal, the nature of the legal work which the office handles, and

the trust and dynamics of the relationship between the paralegal and the attorney. The possibilities when establishing the parameters for the utilization of the paralegal are seemingly endless. For instance, by directing assignments such as propounding and responding to written discovery and generating basic pleadings and motions to the paralegal, the attorney can better concentrate on the matters exclusively within the attorney domain, not the least of which is law practice management and administration.

Paralegals have become instrumental in preparing for and assisting at trial. The organization, creation and presentation of exhibits, demonstrative evidence, and witnesses, which can be complicated, laborious and time-consuming, are being managed by the trained paralegal to great success. Consideration should be given towards enhancing the technological skillset of paralegals who can then meet the demanding needs related to our dependence on electronics, software and now artificial intelligence for trial presentations.

Attorney Supervision of the Paralegal

The caveat is that the paralegal's services must be supervised by a licensed attorney. However, determining the degree

and quality of that supervision can be somewhat of a nebulous endeavor. The California State Bar when interpreting the Rules of Professional Conduct has offered some vague insight on the issue stating that:

What constitutes adequate supervision will ... depend on a number of factors, including but not limited to, the complexity of the client matter, the level of experience of the paralegal, and the facts of the particular case.

(Cal. State Bar Formal Op. 1988-103.)

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While not a crystallized definition of the adequacy of attorney supervision of the paralegal, the default would be the standard of care to which all attorneys are obliged to follow. In any event, caution should be taken to avoid circumstances in which the paralegal engages in the

unauthorized practice of law. Regarding this, subdivision (b) of section 6450 provides direction by listing those tasks which paralegals are prohibited from performing. The most notable are as follows:

1. Do NOT provide legal advice.
2. Do NOT represent the client in court.
3. Do NOT select, explain, draft or recommend legal documents to any person other than the supervising attorney.
4. Do NOT establish fees to charge a client for paralegal services.

Of note is that the State of California does not mandate state licensing or certification as a requirement to practice as a paralegal. However, Section 6452 of the Business and Professions Code expressly prohibits persons from identifying themselves as paralegals if those persons have not met the qualifications set forth in subdivision (c) of section 6450. Moreover, the statute holds the attorney using the services of a paralegal liable for any harm caused by the paralegal's negligence, misconduct

or violation of law. Section 6455 of the Business & Professions Code contains provisions for the imposition of criminal fines and imprisonment on anyone who violates the law applicable to the paralegal profession. Consequently, the attorney who enlists the services of a paralegal even in the context of an independent contractor-principal relationship must take reasonable precautions when supervising, directing or collaborating with the paralegal.

The Paralegal's Continuing Legal Education

To maintain legal status as a paralegal, subdivision (d) of Section 6450 of the Business and Professions Code requires the paralegal to re-certify every two years by completing the following:

1. 4 hours of continuing legal education in legal ethics; and
2. 4 hours of continuing legal education in general or areas of specialized law.

Aside from these statutory requirements, continuing legal education just makes good sense for the benefit of the paralegal, the client, the attorney and the office. New developments and trends in the practice of law seem to be accelerating in their evolution at an increasing rate. In 2024, the State Bar of California published the California Justice Gap Study which acknowledged an ever-widening gap between the availability and the demand for legal services but offered no panacea to fill that gap. To keep pace with the realities of today's legal profession, a law practice that utilizes paralegals must stay relevant by honing their existing skills, updating their base of knowledge, and sparking their creativity.

From my own professional experience, paralegals have repeatedly proven to be invaluable members of my practice. I have been fortunate to work with such consummate professionals. The prevalence of this profession throughout the legal community and its recognition on a local and national level bespeak of its importance and its place in managing a successful law practice dedicated to the advancement of the interests of the client and our system of justice. Given this, a "National Paralegal Day" certainly seems well warranted.

By the way, this state has yet to officially recognize "California Lawyers Day." Just saying. ■