

Billing for time: The lifeblood of the law practice

By Linda S. Jevahirian

In 1989, the United States Supreme Court identified paralegals as separate members of the billing team. (See, *Missouri, et al. v. Jenkins, et al.*, 491 U.S. 274, 109 S.Ct. 2463 (1989).)

Justice Brennan affirmed that the use of paralegals at market rate encouraged the cost-effective delivery of legal services. This was a landmark decision for a profession that was trying hard to distinguish itself.

Brennan's ruling called attention to four important issues:

- the level of education appropriate for a paralegal;
- the difference between paralegal and clerical work;
- the importance of a reliable method for recording paralegal work; and
- how to price paralegal services.

Education

Since the profession is not regulated, any person with any level of education or experience can be labeled a paralegal. Although some employers have specific policies about education and experience, they do so based on their own determination, as opposed to an externally mandated requirement.

In 1990, the State Bar of Michigan established a voluntary membership for legal assistants. Applicants must meet one of the following four criteria to join:

- graduation from an ABA approved paralegal program and completion of a four-year undergraduate degree;

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- completion of a four-year (related or unrelated) undergraduate degree and at least two years of paralegal experience;
- graduation from a two-year paralegal program and at least two years of paralegal experience; or
- four years of paralegal experience.

The prerequisites established by the Legal Assistants Section had a profound and lasting influence on the paralegal profession in Michigan. Many organizations use the criteria as the basis for qualifying their legal assistants. The criteria raised the bar at a time when there was an increase in the number of schooled legal assistants and a heightened awareness about qualifications.

Substantive work

In 1976, the State Bar approved the Guidelines for the Utilization of Legal Assistants Services, which it revised in 1993. (See, "Guidelines for the Utilization of Legal Assistants," www.michbar.org/legalassistants/pdfs/labrochure.pdf.)

The guidelines state that paralegals are responsible for "substantive legal work that is not clerical." While there are no specific directives for education, the guidelines together with the U.S. Supreme Court opinion delineate the division of labor between paralegals and clerical personnel.

Where the clerical work ends — and the paralegal work begins — is an ongoing concern. There is often an overlap due to the nature of the work, and the broad interpretation of what qualifies a paralegal. One way to separate the roles is to ascertain what is considered billable and what is not.

Many clients do not consider the indexing and organizing of ordinary documents a substantive paralegal task, unless the documents are more complicated, such as medical records. Yet, in many law firms secretaries do not have the time to organize and index, especially in large cases.

Litigation support and all the trappings of the electronic age have resulted in activities that are not considered legally substantive. The objective coding and downloading of documents into litigation software is considered a routine and clerical task, yet these assignments are often delegated to paralegals.

Billing records

Clients expect their ledgers to reflect the same level of detail requested by the court. Billable work should be documented in a way that explains the substance and purpose of the task. "Processed document" implies clerical work. The paralegal function is clarified when the same task is expressed as "reviewed complaint and interview notes and drafted interrogatories for ABC Company."

Filling out forms can run the gamut from a simple word change to something that requires high level knowledge, such as a tax form. "Filled out form" does not have the same value as "reviewed client accounts to determine income and expenses and prepared 1040 tax form."

Firms establish their budgets, forecasting and allocation of work based on what they ascertain from paralegal time records. Omitting important items, over-exaggerating time, or not properly describing the task can result in lost hours and the tendency to write off paralegal time as clerical.

The fees

The courts expect lawyers to set fees based on market rates. Market rate is consistent with what is being charged for the same work performed in the same geographic area. A survey of two large law firms, one corporate client, a mid-size firm, and a small firm in the

Detroit metropolitan area explains how paralegal fees are set.

The fees at the four law firms range between \$50 and \$235 per hour. The range at the small firm is \$100-\$125 per hour. The range at the midsize firm is \$130-\$140 per hour. One large firm ranges from \$50-\$145, while the other large law firm range is \$75-\$235 per hour.

All four law firms base their rates on the area of law, and on the education and experience level of the paralegal. In the two large firms, specialties such as bond, employee benefits, tax, patent prosecution, specialized commercial and employment litigation, and immigration are at the top of the scale.

The midsize firm charges \$130 to process real estate closings. The rate is increased to \$140 when senior level paralegals perform estate planning and real estate work, and for all litigation work. The higher small firm rate is reserved for the paralegal with the most education.

Both large firms offer discounts to higher volume clients as a way to enhance client relationships. The firms also lower the fees based on client demand. One common thread is insurance work that is done by highly capable and experienced paralegals, but is billed at the lower end of the scale. Asbestos follows the same pattern.

The corporation pays a flat \$75 per hour across the board, and the fee is increased slightly for special projects. The education and experi-

ence of the law firm's paralegals are not factored into the fee. The statements are reviewed by an experienced paralegal who is knowledgeable about how law firms operate. She does not hesitate to write off fees for work that is not legally substantive.

Conclusion

The market for legal services is an increasingly sophisticated one. Justice Brennan set the stage for the fair establishment of paralegal qualifications and the recognition of separate paralegal fees.

The response, though covering a broad-spectrum, elevated the role of the paralegal and added significant value to the practice of law. The successful use of legal assistants combines Brennan's advice and the guidelines provided by the State Bar of Michigan with sound and practical business sense.

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