

A publication
from the
ABA Standing
Committee
on Paralegals

UPdate

A look at Unauthorized Practice of Law Rules

Upcoming events

ABA Standing Committee on Paralegals Spring Meeting
6/17-18/2005
Denver, CO

ABA Annual Meeting
8/4-9/2005
Chicago, IL

NALA 30th Annual Convention & Exhibition
7/13-16/2005
Kansas City, MO

American Alliance of Paralegals, Inc.—Annual CLE Seminar and Elections
September or October, 2005
Phoenix, AZ

AAfPE Annual Conference
10/19-22, 2005
Tampa, FL

NALS 54th Annual Educational Conference & National Forum
10/20-23, 2005
Buffalo/Niagara Falls, NY

IPMA (f/k/a LAMA) Annual Conference
11/2 - 11/5, 2005
Seattle, WA

This excerpt is from Chapter Four (Unauthorized Practice of Law) of The Legal Assistant's Practical Guide to Professional Responsibility, Second Edition, published by the ABA Center for Professional Responsibility. To order copies, please use the order form on page 5.

ABA Model Rule 5.5 forbids a lawyer from assisting another, including a nonlawyer, in the unauthorized practice of law. It does not define the practice of law, leaving that to the individual jurisdictions. 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.

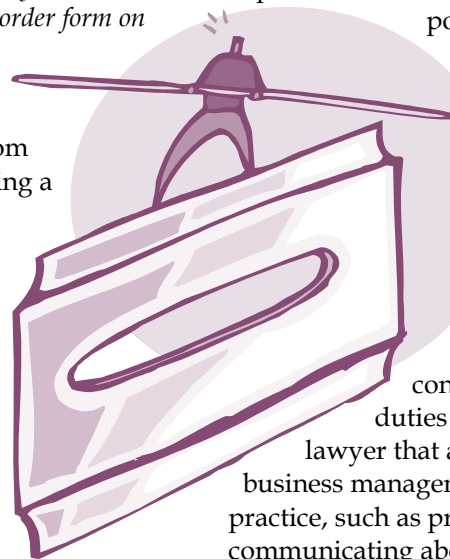
According to Canon 3 of the NALA Code of Ethics and Professional Responsibility, a legal assistant shall not engage in the unauthorized practice of law. EC-1.8 (a) of the NFPA Model Code of Ethics and Professional Responsibility provides that a legal assistant shall comply with the applicable legal authority 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 dependant 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. 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

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Chair's Column

Frances P. Kao

Chair, ABA Standing Committee on Paralegals



We are in the middle of recommending to the ABA President-Elect next year's appointments to the Approval Commission ("Commission"). Since many people often ask how we make these appointments, I thought it would be worthwhile to discuss the organization of the Commission, its responsibilities, and the qualifications we seek.

The Commission is the body that recommends to the Standing Committee on Paralegals (the "Standing Committee") action on paralegal education programs seeking approval, reapproval, or other interim action. The Commission has 13 members including six ABA members, one public sector paralegal, three representatives of the American Association for Paralegal education, and one representative each from the International Paralegal Management Association, the National Association of Legal Assistants, and the National Federation of Paralegal Associations. Each Commission member is appointed for a one year term, and members are usually reappointed and serve for a total of three years.

The work of the Commission is educational, challenging and, in many ways, invigorating. The Commission meets twice a year – in the spring and in the fall – in the ABA's Chicago offices. Additionally, as part of the process to recommend action to the Standing Committee, members of the Commission are required to

participate in site visits to paralegal education programs around the country. New members are included in an extensive site team training process and also have the opportunity to observe the process by participating on visits with experienced site teams. Because Commission members chair every site team, new members will become site team chairs when they achieve a level of proficiency with the process.

Although the chair of the site team, like other members of the site team, must review the program's self-evaluation report and supporting documents in advance of the site visit, the chair is also the heart of the site team. It is the chair of the site team that sets the tone of the site visit, ensures the visit is conducted properly, coordinates pre- and post-visit meetings with members of the site team, leads the exit meeting with program representatives, coordinates the writing of the site team report, and represents the site team in reporting on the visit to the Commission.

All members of the Commission should have experience working with or as paralegals. Additionally, in light of the responsibilities that Commission members have to chair site visit teams of institutions of higher learning, nonlawyer members of the Commission should have, as a minimum, a four-

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Life as a big firm paralegal

Q&A with Catherine Laakko

of Skadden, Arps, Slate, Meagher & Flom LLP (Chicago)

Briefly describe your firm, your department, how long you've worked at Skadden, the number of attorneys you work with, and your particular area of experience/expertise.

I have been a paralegal for more than 20 years, the last two decades working in the Complex Mass Torts and Insurance Litigation department of Skadden, Arps, Slate, Meagher & Flom ("Skadden"). Skadden is a corporate law firm with a lively Products practice representing Fortune 500 corporations in large exposure cases. I work with 13 Complex Torts attorneys in Chicago and am frequently asked to help partners firm-wide with special research projects. My work varies from highly specialized fact and expert witness research to day-to-day case management. While at Skadden, I have worked on a number of large cases: *In Re Wireless Telephone*; *In Re Managed Care Litigation*; *In Re Albuterol Litigation*; *Asbestos Litigation*; *In Re Silicone Breast Implants* and *In Re Salmonella Litigation*.

Tell us about your background and how it prepared you for this work.

I graduated from the University of Michigan with a BA in Political Science. I did not attend a paralegal program. All of my training has been on the job.

My first paralegal job was with Joscelyn & Treat ("J&T") in Ann Arbor, a six attorney firm specializing in expert witnesses for *Jeep CJ Roll-over Litigation*. I wrote case summaries, assisted in accident site surveys, digested technical depositions, researched experts to undermine their testimony, assisted in expert witness preparation, drafted trial exhibit lists and prepared trial exhibits. I also created 'state of the art' literature review binders on warnings and advertising that were circulated to the client and to local counsel nation wide.

In May 1986, I moved to Chicago and Skadden hired me to coordinate expert witnesses for the *In Re Salmonella* class action, the largest class action lawsuit at that time.

What specific skills are especially necessary for the kind of paralegal work you do?

Organizational skills are critical at a large firm handling mass torts. Document productions run in the millions of pages, pleadings files in the thousands, and you may be supporting 10 or more attorneys at one time. My organizational goal is to deliver requested items in under five minutes.

Computer skills are also essential. Document management software like Concordance, DocuMatrix, Summation, and Access must be mastered, particularly coding and search strategies. Additionally, prowess in Word Perfect, Word, Excel (database reports), PowerPoint (hearing outlines, trial graphics), and Adobe Acrobat enables you to send work product and database reports to clients and counsel. On-line research strategies in Google, Lexis/Nexis and Westlaw are the backbone of my work. To keep abreast of new resources I network with research librarians and read *PC Magazine* and the technical section of national newspapers.

What level of interaction do you have with the attorneys?

I have close contact with all the attorneys but mainly work with the partners. For first year associates I make suggestions on organizational structure, find samples of work product parallel to their projects and serve as liaison to other departments. Mid-level associates depend on me to manage the troops for big case projects. Partners assume I am

controlling the case file and rely on my research skills. I also assist the partners in new business development by researching potential clients.

What's one of the most notable projects you've worked on?

Last year I assisted in a class certification hearing at the famous Madison County Illinois Courthouse. Recently I assisted in an appellate hearing that reversed a \$1 billion jury verdict. An old favorite is the *In re Salmonella* case where I identified experts who later testified at trial and assisted in the preparation of key witnesses.

Any parting thoughts?

Large firms call for diplomacy in dealing with departments critical to getting your work done – mail room, copy center, word processing, and PC support. Large firms may also have a paralegal hierarchy of team coordinators, department supervisors, managers, and directors. It is important to adhere to firm requirements on getting time sheets in, preparing expense reports in a timely manner, and to volunteer to help peers or serve on committees. These gestures pay off in good will, salary, and bonuses.

Finally, personality traits like tenacity, insight and commitment are qualities I look for when interviewing candidates for positions in our department. Tenacity is the will to solve problems. Insight is understanding how big cases run and what busy attorneys need (for example, is this binder for here or to go?). Commitment is believing that your work makes a difference.

Paralegal Catherine Laakko can be reached at: claakko@skadden.com

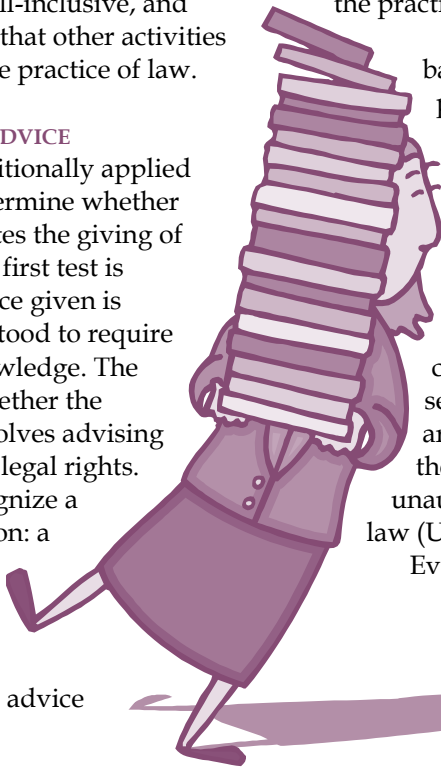


*Unauthorized practice of law
(continued from page 1)*

from jurisdiction to jurisdiction. 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. 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

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. The second test is whether the conversation involves advising someone of their legal rights. 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. 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. 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.

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. ♦

Update is published by the American Bar Association Standing Committee on Paralegals, American Bar Association, 321 N. Clark Street, Chicago, IL 60654-7598. wallacep@staff.abanet.org)

Editor and Creative Director: Paula Tsurutani, consultant to the Standing Committee on Paralegals (ptsurutani@sbcglobal.net) The views expressed are those of the authors and do not necessarily represent the policies of the American Bar Association or those of the ABA Standing Committee on Paralegals. The contents of this publication have not been approved by the ABA House of Delegates and do not constitute ABA policy and are intended for informational purposes only. Comments and proposed articles should be directed to wallacep@staff.abanet.org

ABA Model Guidelines for the Utilization of Paralegal Services

The ABA Model Guidelines for the Utilization of Paralegal Services were initially adopted by the ABA House of Delegates in 1991. They are intended to provide useful and authoritative guidance to lawyers when working with paralegals. The Guidelines were revised in 2003, and the accompanying commentary reflects the legal and policy developments since 1991.

Guideline 4: A lawyer is responsible for taking reasonable measures to ensure that clients, courts, and other lawyers are aware that a paralegal, whose services are utilized by the lawyer in performing legal services, is not licensed to practice law.

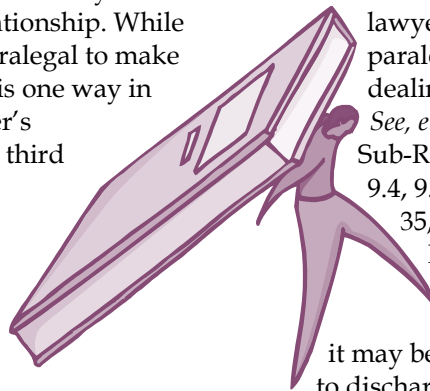
Comment to Guideline 4

Since, in most instances, a paralegal is not licensed as a lawyer, it is important that those with whom the paralegal communicates are aware of that fact. The National Federation of Paralegal Associations, Inc. ("NFPA"), Model Code of

Professional Ethics and Responsibility and Guidelines for Enforcement, EC 1.7(a)-(c) requires paralegals to disclose their status. Likewise, NALA Canon 5 requires a paralegal to disclose his or her status at the outset of any professional relationship. While requiring the paralegal to make such disclosure is one way in which the lawyer's responsibility to third parties may be discharged, the Standing Committee is of the view that it is desirable to emphasize the lawyer's responsibility for the disclosure under Model Rule 5.3 (b) and (c). Lawyers may discharge that responsibility by direct communication with the client and

third parties, or by requiring the paralegal to make the disclosure, by a written memorandum, or by some other means. Several state guidelines impose on the lawyer responsibility for instructing a paralegal whose services are utilized by the lawyer to disclose the paralegal's status in any dealings with a third party. See, e.g., Kentucky SCR 3.700, Sub-Rule 7, Indiana Guidelines 9.4, 9.10, New Hampshire Rule 35, Sub-Rule 8, New Mexico Rule 20-104. Although in most initial engagements by a client it may be prudent for the attorney to discharge this responsibility with a writing, the guideline requires only that the lawyer recognize the responsibility and ensure that it is discharged. Clearly, when a client

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ABA Model Guidelines...
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has been adequately informed of the lawyer's utilization of paralegal services, it is unnecessary to make additional formalistic disclosures as the client retains the lawyer for other services.

Most guidelines or ethics opinions concerning the disclosure of the status of paralegals include a proviso that the paralegal's status as a nonlawyer be clear and that the title used to identify the paralegal not be deceptive. To fulfill these objectives, the titles assigned to paralegals must be indicative of their status as nonlawyers and not imply that they are lawyers. The most common titles are "paralegal" and "legal assistant" although other titles may fulfill the dual purposes noted above. The titles "paralegal" and "legal assistant" are sometimes coupled with a descriptor of the paralegal's status, e.g., "senior paralegal" or "paralegal coordinator," or of the area of practice in which the paralegal works, e.g., "litigation paralegal" or "probate paralegal." Titles that are commonly used to identify lawyers, such as "associate" or "counsel," are misleading and inappropriate. *See, e.g.,* Comment to New Mexico Rule 20-104 (warning against the use of the title "associate" since it may be construed to mean associate-attorney).

Most state guidelines specifically endorse paralegals signing correspondence so long as their status as a paralegal is clearly indicated by an appropriate title. *See* ABA Informal Opinion 1367 (1976).



Guideline 5: A lawyer may identify paralegals by name and title on the lawyer's letterhead and on business cards identifying the lawyer's firm.

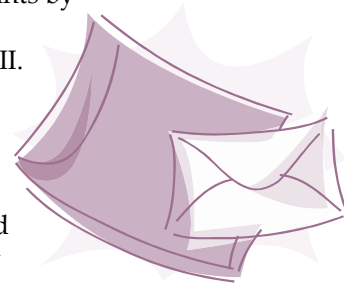
Comment to Guideline 5

Under Guideline 4, above, a lawyer who employs a paralegal has an obligation to ensure that the status of the paralegal as a nonlawyer is fully disclosed. The primary purpose of this disclosure is to avoid confusion that might lead someone to believe that the paralegal is a lawyer. The identification suggested by this guideline is consistent with that objective while also affording the paralegal recognition as an important member of the legal services team.

ABA Informal Opinion 1527 (1989) provides that nonlawyer support personnel, including paralegals, may be listed on a law firm's letterhead and reiterates previous opinions that approve of paralegals having business cards. *See also* ABA Informal Opinion 1185 (1971). The listing must not be false or misleading and "must make it clear that the support personnel who are listed are not lawyers."

All state guidelines and ethics opinions that address the issue approve of business cards for paralegals, so long as the paralegal's status is clearly indicated. *See, e.g.,* Florida State Bar Ass'n. Comm. on Prof'l Ethics, Op. 86-4 (1986); Kansas Bar Ass'n, Prof'l Ethical Op. 85-4; State Bar of Michigan Standing Comm. on Prof'l and Judicial Ethics, RI-34 (1989); Minnesota Lawyers' Prof'l Responsibility Bd., Op. 8 (1974). Some authorities prescribe the contents and format of the card or the title to be used. *E.g.,* Georgia Guidelines for Attorneys Utilizing Paralegals, State Disciplinary Board Advisory Op. No. 21 (1977); Iowa State Bar Ethical Guidelines for Legal Assistants in Iowa, Guideline

4; South Carolina Bar Ethics Op. 88-06; and Texas General Guidelines for the Utilization of the Services of Legal Assistants by Attorneys, Guideline VIII. All agree the paralegal's status must be clearly indicated and the card may not



be used in a deceptive way. Some state rules, such as New Hampshire Supreme Court Rule 7, approve the use of business cards noting that the card should not be used for unethical solicitation.

Most states with guidelines on the use of paralegal services permit the listing of paralegals on firm letterhead. A few states do not permit attorneys to list paralegals on their letterhead. *E.g.,* State Bar of Georgia Disciplinary Board Opinion Number 21 "Guidelines for Attorneys Utilizing Paralegals," 1(b); New Hampshire Supreme Court Rule 35, Sub-Rule 7; New Mexico Supreme Court Rule 20-113 and South Carolina Bar Guidelines for the Utilization by Lawyers of the Services of Legal Assistants Guideline VI. These states rely on earlier ABA Informal Opinions 619 (1962), 845 (1965), and 1000 (1977), all of which were expressly withdrawn by ABA Informal Opinion 1527. These earlier opinions interpreted the predecessor Model Code DR 2-102 (A), which, prior to *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), had strict limitations on the information that could be listed on letterheads. In light of the United States Supreme Court opinion in *Peel v. Attorney Registration and Disciplinary Comm'n of Illinois*, 496 U.S. 91 (1990), it may be that a restriction on letterhead identification of paralegals that is not deceptive and clearly identifies the paralegal's status

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ABA Model Guidelines...
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violates the First Amendment rights of the lawyer.

More than 20 states have rules or opinions that explicitly permit lawyers to list names of paralegals on their letterhead stationery, including Arizona, Connecticut, Florida, Illinois, Indiana, Kentucky, Michigan, Mississippi, Missouri, Nebraska, New York, North Carolina, Oregon, South Dakota, Texas, Virginia, and Washington.

The Model Code of Ethics and Professional Responsibility of the National Federation of Paralegal Associations indicates that the paralegal's "title shall be included if the paralegal's name appears on business cards, letterheads, brochures, directories, and advertisements." Canon 6, EC-6.2. NFPA Informal Ethics and Disciplinary Opinion No. 95-2 provides that a paralegal may be identified with name and title on law firm letterhead unless such conduct is prohibited by the appropriate state authority. ♦

Download copies of the ABA Guidelines at www.abanet.org/legalservices/downloads/legalassistants/modelguidelines/pdf. Or, use the order form on page 5.

Visit our Web site

Have you visited the Standing Committee's Web site lately (www.abaparalegals.org)? The site contains information on approved programs, career information, listings of upcoming paralegal association meetings, descriptions of the Standing Committee's publications, pdfs of past issues of *Update*, and information on how lawyers can effectively use paralegals in their practice. Check it out! ♦



Welcome new Commission member

Sybil Taylor Aytch, RP

New Commission member Sybil Taylor Aytch, RP, has more than 20 years of experience in complex litigation and corporate bankruptcy law. She is a senior bankruptcy paralegal at Quarles & Brady Streich Lang LLP in Phoenix, AZ.

Ms. Aytch was formerly a senior specialist and coordinator in the bankruptcy department at Skadden, Arps, Slate, Meagher & Flom LLP in New York City for 8 years. She is a member of the National Federation of Paralegal Association's (NFPA) PACE Standards Committee, the International Paralegal Management Association, the American Association for Paralegal Education and the Maricopa County Bar Association Paralegal Division where she served as the first President. Ms. Aytch was



awarded NFPA's Outstanding Local Leadership Award in 2002. She is an adjunct faculty member at Phoenix College where she teaches Introduction to Paralegalism and Bankruptcy Law.

Ms. Aytch holds a double B.A. in French and English from Smith College in Northampton, MA and a M.Ed. in Counseling/Human Relations from Northern Arizona University in Flagstaff, AZ. She was also educated in Paris, France and earned a Certificat en Littérature in French Literature from La Sorbonne and a Certificat en Sciences Politiques in International Law from l'Institut d'Études Politiques. As a member of the Approval Commission, her goal is to contribute to the ABA's tradition of strong educational requirements in order to continue the advancement of the paralegal profession. ♦

2005 ABA Annual Convention in Chicago—August 4-9

Plan now to attend the ABA Annual Convention in Chicago, August 4-9. Chicago is a particularly ideal destination for an Annual Meeting because it is the home of the ABA's new headquarter office at 321 North Clark Street, situation in the heart of the River North area of the city.

While you're in town for the Meeting, be sure to stop by and visit both the new office and the

ABA Museum of Law, located on the building's lower level. Located on the beautiful shores of Lake Michigan, Chicago's highlights include cultural activity, renowned architecture and internationally acclaimed dining. Chicago also boasts a new global destination, Millennium Park, a 24-acre public expanse devoted to art and music that has received international recognition. Register online at the ABA Web site (www.abanet.org). ♦



*Chair's column**(continued from page 2)*

year college degree from an accredited institution.

Finally and most importantly, Commission members will be visiting educational programs across the country from California to Maine each of which serves a different community and a different constituency. Accordingly, it is paramount that the Commission be balanced to ensure

that it can reflect this spectrum of communities and constituencies. To that end, we not only support but actively seek participation by minorities, women, and persons with disabilities. If you are committed, energetic, and looking for a challenge (not to mention two visits a year to our beautiful city by the lake), please contact Peggy Wallace, Staff Counsel of the ABA Standing Committee on Paralegals at: wallacep@staff.abanet.org ♦

New paralegal committee

The Ad Hoc Committee on the Use of Paralegals in a Business Law Practice has been created to examine the role and uses of paralegals by business lawyers, identify best practices, and to offer suggestions to business lawyers on how to better serve their clients by most appropriately utilizing the services of business paralegals.

The Ad Hoc Committee is currently planning its first program, which will take place at the ABA Annual Meeting in Chicago this August. The Committee also hopes to produce a publication geared to attorneys based on that program. Section of Business Law Members are welcome to join the Ad Hoc Committee on the Use of Paralegals in a Business Law Practice for free. For more information, please contact Judy Stofko in the ABA Section of Business Law at: stofkoj@staff.abanet.org ♦

How to get involved



There are many ways you can become more involved in the work of the Standing Committee on Paralegals.

Tell us if you've started a new program, have an interesting approach, or know someone whose work would inspire other educators or paralegals. We can report these efforts, write a story, or post information on our Web site.

Contact Peggy Wallace at the ABA's Standing Committee on Paralegals at: wallacep@staff.abanet.org, or Paula Tsurutani, editor of *Update*, at: ptsurutani@sbcglobal.net.

We also want to involve new people in our Committee efforts. To be considered for a leadership position on a subcommittee or task force, please contact Peggy Wallace at the ABA's Standing Committee on Paralegals. ♦



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*A publication
from the
ABA Standing
Committee
on Paralegals*

321 N. Clark Street
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Volume 6, Number 3 (Spring) May 2005

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