

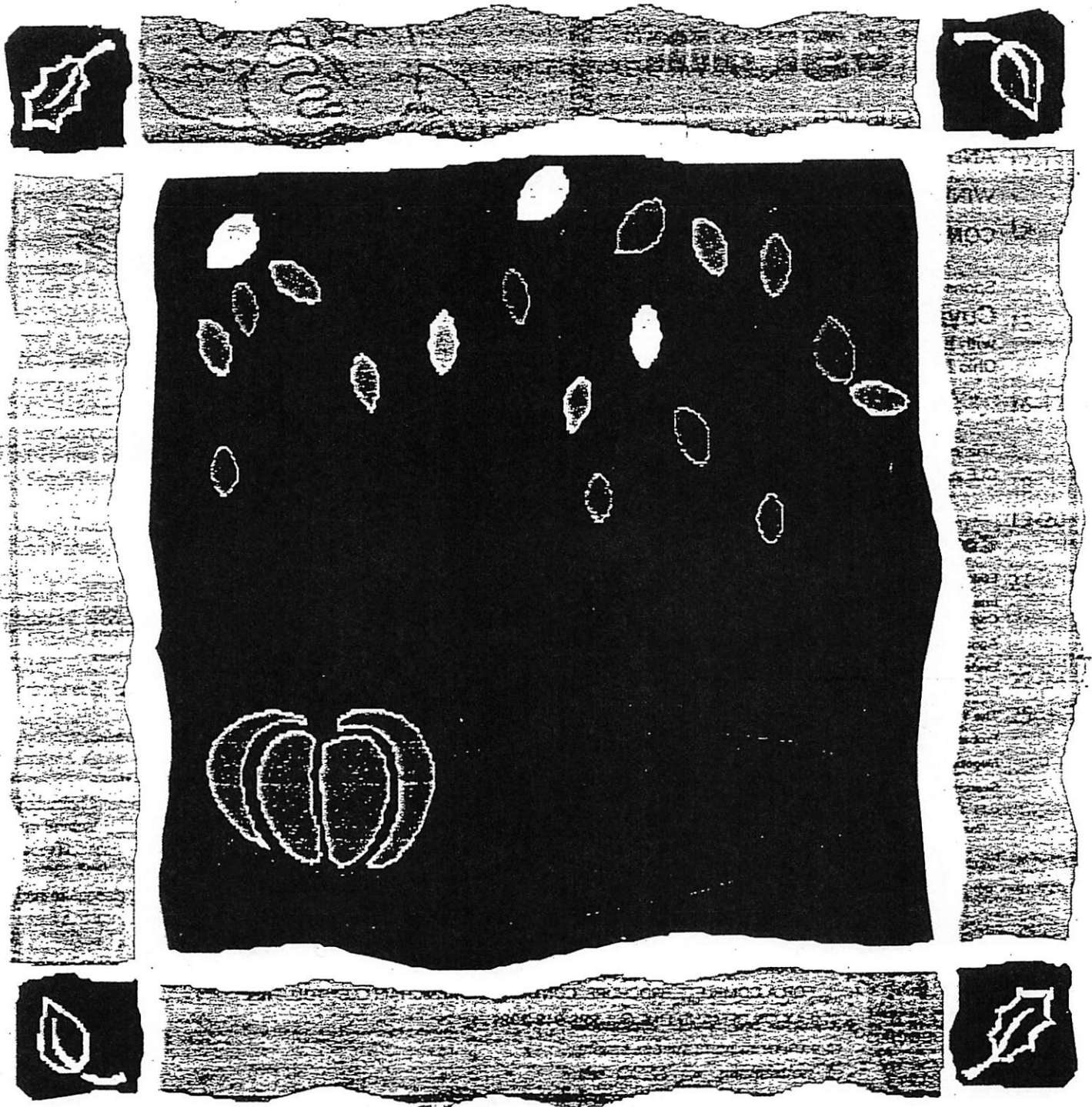
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# Eye on Paralegals

## Maintaining Control of Your Legal Practice Through the Effective Use of Paralegals

by Marlon Primes, Esq.

An old adage that adequately describes the hectic life of any litigator is that there is always something that can be done and there is never enough time in the day to do it all. While there is probably no foolproof cure for this age old problem, the effective use of paralegals can enable litigators and other legal practitioners to obtain greater control over their law practice, provide better service to clients and avoid costly ethical lapses.

### Law Firm Management

Although paralegals are not licensed to practice law, many have certificates or degrees from accredited paralegal programs, which can provide several years of extensive training about the court system, legal terminology, contracts, torts, property and the other major legal subject areas. The Code of Professional Responsibility provides that paralegals can complete a number of tasks, especially if it allows a lawyer "...to render legal service more economically and efficiently." Model Code of Professional Responsibility EC 3-6 (1980). Consequently, with proper training and direction, paralegals, among other things, can:

- 1 Shepardize cases cited by opposing counsel to determine if they are still binding and perform natural language searches on WESTLAW and LEXIS to quickly obtain cases about a specific body of law;
- 2 Organize exhibits and files in preparation for trials, depositions and other legal proceedings;
- 3 Digest the transcripts of depositions to allow lawyers to quickly reference the important aspects of these proceedings;
- 4 Initially contact potential witnesses and organize notes of these meetings so the lawyer can decide whether to depose and/or use the witnesses at trial;
- 5 Review and obtain deeds, judicial reports and other matters in foreclosure litigation;
- 6 Assist in preparing initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) and/or responding to interrogatories, requests for production of documents and requests for admissions;
- 7 Serve as jurors in mock trials and give feedback from a layperson's perspective about how to make presentations more understandable and persuasive for a jury;
- 8 Visit accident scenes and take photographs;
- 9 Obtain accident reports, medical records and/or arrange record depositions; and
- 10 Return phone calls from clients and opposing counsel, respond to procedural inquiries, and forward substantive matters to the lawyer.

### *Model Code of Professional Responsibility EC 3-6 (1980).*

However, before rushing off to drop a pile of these types of assignments on a paralegal's desk, the Code of Professional Responsibility and common sense dictates that the paralegal work under the lawyer's direction, received adequate training and that an environment is fostered that enables questions to be asked when the need arises. *Id.*; *Counsel v. Ball*, 67 Ohio St. 3d 401, 404 (1993). To do otherwise, surely is an invitation for disaster. *Id.*

The recent wave of new technology also allows paralegals to be of even greater assistance to busy litigators. In medical malpractice and personal injury cases, extensive color charts of skeletal frames, muscles, knees, spines can be quickly obtained from the Internet. <http://www.lib.uchicago.edu/hw/anatomy>; <http://www.yahoo.com/Science/Biology/Anatomy>; and <http://www.innerbody.com/indexbody.html>. After obtaining proper authorization, these diagrams can make excellent exhibits and enable the court and the jury to completely understand the full extent of injuries. *Id.* Internet, LEXIS and WESTLAW searches can also provide revealing information about opposing expert witnesses that could prove useful at depositions and at trial. <http://www.docinfo.com/docsrch.htm>. Moreover, LEXIS and WESTLAW have developed a natural language search. A paralegal, therefore, only

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has to cite key words such as "slip and fall," "foreclosure," or "medical malpractice" and can immediately retrieve cases from the Ohio Supreme Court or any other court across the country.

However, the fact that paralegals are not lawyers can also be of great value because they can provide a layperson's perspective about how to make a legal presentation more clear, precise, and persuasive. In fact, for this very reason, a number of successful litigators typically advise practitioners to get a layperson's view of the case before trial. Conrad, "Litigating Medical Malpractice Claims," SC39 ALI-ABA 285, 312-314 (1997); and Chimicles, "The Trial of the Securities Case: The Plaintiff's Perspective," SB93 ALI-ABA 181, 188 (1997).

#### Client Management

One of the other great untapped resources a paralegal can provide is in the area of client development and retention. There is nothing that is going to make a client angrier than receiving extensive bills for the review and completion of basic correspondence or for other routine matters at an attorney's billable rate of two hundred and fifty dollars (\$250) per hour. In fact, in federal cases where attorneys' fees have been awarded, many courts have refused to award the full attorney fee for these tasks that could have been delegated to a paralegal. Wooldridge v. Marlene Industries Corp., 898 F. 2d 1169, 1076-77 (6<sup>th</sup> Cir. 1990); 42 U.S.C. 1988. Accordingly, if these tasks and others can be completed by a properly trained paralegal, clients are going to be happier and the lawyer is going to be able to devote more time to substantive matters. Id.

#### Maintaining Ethical Standards

Finally, the Code of Professional Responsibility requires that lawyers keep clients updated about the status of their cases and promptly respond to telephone calls from clients and opposing counsel. Cleveland Bar Association v. Stranathan, 71 Ohio St. 3d 303, 303-06 (1994); Cleveland Bar Association v. Harrison, 61 Ohio St. 3d 91, 92 (1991); Cincinnati Bar Association v. Fennell, 63 Ohio St. 2d 113, 116, 119-120 (1980); Code of Professional Responsibility DR 6-101(A)(3), EC 7-5, and EC 7-7 (1980). In fact, the Ohio Supreme Court, in attorney disbarment and disciplinary proceedings, has spoken forcefully about this requirement. Id.; Stranathan, 71 Ohio St. 3d at 303-06. Nevertheless, despite the perils,

responding immediately to telephone calls and other inquiries can present challenges because calls may come when attorneys are in trial, under deadline pressure to quickly complete other tasks, and/or while they are simply away from the office. And, unfortunately, some attorneys make it a litigation strategy to inundate attorneys with telephone calls and correspondence to effectuate prompt settlement or in hopes that something will slip through the cracks. A properly trained paralegal can screen the calls and answer questions about hearing dates. Paralegals can also respond to inquiries about when and whether motions have been filed and simply forward more pressing legal issues to the attorney. Clients and opposing lawyers will be overjoyed to quickly obtain this important information, even if it does not come from the attorney of record. And, instead of returning thirty (30) calls about scheduling and other procedural matters, the attorney can better spend time dealing with substantive matters of more pressing concern to the legal interests of the client.

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