Paralegals and Unauthorized Practice of Law

Paralegals are prohibited from engaging in the unauthorized practice of law, and, if they do so, can be fined or even imprisoned. The purpose of this prohibition is presumably to protect consumers from being advised by unqualified individuals. The courts are also concerned about lay people engaging in legal practices when they are not governed by the same ethical restraints that apply to attorneys. Some, however, believe that the true purpose of this prohibition is to protect attorneys from competition by lay people who can provide comparable services for less money.

The state statutes prohibiting non-lawyers from practicing law do not clearly define "practice of law." The Model Code (see below) defines it as any activity that calls for the exercise of professional judgment, which is defined as "the educated ability to relate the general body and philosophy of law to a specific legal problem of a client." (EC 3-5) The courts have struggled with the ambiguity of these definitions and have concluded that certain tasks are prohibited. Paralegals cannot, for example, appear in court to present cases or argue motions. They can, however, represent clients at certain administrative hearings, such as those at the Immigration and Naturalization Service, the Social Security Administration, the Interstate Commerce Commission, and the Patent Office.

They also cannot give legal advice, although what constitutes legal advice is not always clear. Generally speaking, any advice about how to achieve a particular legal result or how to resolve a specific legal problem is giving legal advice. In other words, paralegals can provide information of a factual nature but cannot offer information involving subjective judgments. They can respond to questions such as "What happens now that we have filed a complaint?" by talking about the timelines that must be adhered to, the court papers the defendant must file, the options available to the defendant, and so on. They are not permitted to respond to a question such as "What do you think our chances of prevailing in this lawsuit are?" other than suggesting that the individual contact the attorney assigned to the case. In small offices, in particular, paralegals are often tempted to walk the edge of law practice by clients who want them to give information, make projections, and discuss strategies. Clients turn to paralegals because they cannot get what they want from attorneys who are either unavailable or unwilling to speculate. But paralegals must resist the temptation to inappropriately advice clients, even when they are desperate for information.

Paralegals can draft legal documents, but these documents must be reviewed by an attorney before they can be seen by anyone outside of the office. Lay persons can also prepare standardized forms that are incidental to their business, especially when they are simply filling in the blanks on forms prepared by attorneys. Real estate agents, for example, are allowed in some states to draft sales contracts. Paralegals cannot, however, give clients guidance about what to put in the form; they can only use the information the client provides.

Paralegals are not allowed to set fees or accept cases. The two are inextricably interrelated. Because only a lawyer can establish a lawyer-client relationship, only a lawyer can enter into a fee agreement with a client.

Paralegals can perform legal tasks, to some extent at least, if they are under the adequate supervision of an attorney. Such legal practice is not unauthorized as long as the "attorney maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product," according to the Model Code. The problem is determining what constitutes "adequate supervision." To what degree must an attorney review a paralegal's work? Is the attorney required only to give general instructions? With no firm guidelines in place dictating what an attorney is required to do, individual attorneys must assess the amount of supervision necessary and usually base their degree of supervision on the paralegals experience level and the complexity of the task assigned.
Other tasks paralegals can perform include contacting clients and individuals outside the office (as long as they identify their status as paralegals), relaying instructions, informing clients about the status of their case, and interacting with third parties on behalf of clients. They cannot, however, offer their opinions. In some states, paralegals can supervise the signing of wills, appear in court to answer calendar calls, and make routine motions in court.

Paralegals must always take great care in disclosing their non-attorney status so as to never mislead anyone to believe they are authorized to practice law. They must never misrepresent their status to other attorneys, government officials, the courts, or the general public. Paralegals must clearly reveal their non-attorney status on business cards and on correspondence.

If you're trying to find paralegal jobs, click here.