



## 511: Use of Nonlegal Managers to Perform Legal Functions

**Thomas A. Boardman**  
*Deputy General Counsel*  
3M Company

**Howard A. Eisenhardt**  
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Charter One Bank, NA

**Geneace Williams**  
*Senior Counsel & Tort Litigation Practice Group Leader*  
McDonald's Corporation

## Faculty Biographies

### Thomas A. Boardman

Thomas A. Boardman is staff vice president, deputy general counsel, and assistant secretary of 3M Company located in Saint Paul, Minnesota. Mr. Boardman's current areas of practice include general corporate, mass tort, insurance, drugs, medical devices and related product liability litigation, and international. He has recently had overall management responsibility for all aspects of the \$1 billion breast implant liability issue as well as the insurance recovery associated therewith.

Mr. Boardman has worked with all sectors of the company, including as a management fellow in Washington, DC and the head of 3M's legal function in Brussels.

He received his BA from The College of Wooster in Wooster, Ohio and his JD from Washington University School of Law in St. Louis.

### Howard Eisenhardt

Howard A. Eisenhardt is chief counsel for Charter One Bank N.A., a national bank headquartered in Cleveland, Ohio with assets of over \$41 Billion. Charter One is a subsidiary of Citizens Financial Group, now the 8th largest commercial bank holding company in the United States, with assets of over \$128 billion. He is directly responsible for all legal matters affecting Charter One. Additionally, he manages day-to-day corporate housekeeping, assists in corporate expansion, manages all litigation including the supervision of outside counsel, and supervises all Charter One in-house counsel and support staff.

Mr. Eisenhardt began his legal career in a small law firm that specialized in banking and commercial law. Following his tenure in the law firm, Mr. Eisenhardt served as associate corporate counsel to Charter One Bank N.A for many years before receiving his current appointment.


He serves as a board member to a sundry of non-profit youth development and sports organizations.

Mr. Eisenhardt received a BA from Dickinson College and is a graduate of Capital University Law School.

### Geneace Williams

Geneace Williams is practice group leader of the customer action team for McDonald's Corporation located in Oak Brook, Illinois. Ms. Williams has leadership and management responsibilities for the tort practice group, which has specific responsibility for overseeing all personal injury, including product and premises liability claims and litigation brought against the corporation and operators throughout the United States and the Caribbean. Ms. Williams also provides legal advice to management of a number of departments within McDonald's Corporation. She is also the chairperson of the legal department's diversity initiative.


Prior to joining McDonald's, Ms. Williams was in private practice at the law firm of Hinshaw & Culbertson.



**Session 511**  
**Use of Nonlegal Managers to  
Perform Legal Functions**  
**Howard Eisenhardt**  
**Thomas A. Boardman**  
**Geneace Williams**

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## To Use or Not To Use More Non-Legal Personnel

### ● WHO ARE THEY?

- Paralegals, legal assistants, and other non-lawyer managers
- Paralegal profession was only started about thirty years ago
- ABA Definition:
  - A legal assistant or paralegal is a person qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible.

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## To Use or Not To Use More Non-Legal Personnel

### ● EDUCATION AND CERTIFICATION

- National Association of Legal Assistants
  - <http://www.nala.org>
- National Federation of Paralegal Associations
  - <http://www.paralegals.org>
- American Association for Paralegal Education
  - <http://www.aafpe.org>
- American Bar Association Standing Committee on Legal Assistants
  - <http://www.abanet.org>

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## To Use or Not To Use More Non-Legal Personnel

### ● OTHER SOURCES

- Non-lawyer Personnel Within Your Company:
  - Operations, Compliance, Security
    - Bank takes a Bank Protection Manager with institutional knowledge of computer systems, other departments, products, and security issues and turns that employee into an Assistant Privacy Officer, to handle safeguarding systems and customer information bank wide

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## To Use or Not To Use More Non-Legal Personnel

- BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK, 2002-03 EDITION
  - 2 year associate degrees, 4 year bachelor degrees, certificate program;
  - Over 800 formal paralegal programs offered by 4 year colleges and universities;
  - Approximately 247 programs approved by the ABA;
  - Projected to grow faster than the average for all occupations through 2010;
  - Approximately 188,000 jobs in 2000.

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## To Use or Not To Use More Non-Legal Personnel

### ● WHY HIRE NON-LAWYERS TO PERFORM LEGAL FUNCTION

- Increasing pressure to do more with less;
- Increased pressure to do more in-house;
- Market place has changed. Trend is to delegate more “legal” work to Non-Lawyers;
- Cost (See Dept. of Labor) average salary for lawyer with just 6 months of experience in the Business/Industry category is \$60,000.00 versus all paralegals and legal associates regardless of years of experience with an average of \$35,000.00;
- Frees lawyers for more difficult tasks.

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## To Use or Not To Use More Non-Legal Personnel

### ● ADVANTAGES TO NON-LAWYER APPROACH

- Creativity;
- More time to meet with clients or business units;
- More readily accessible to clients and business units;
- Often have broader institutional knowledge;
- Gatekeeper between business units and outside counsel;
- Usually have a better command of technology.

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## To Use or Not To Use More Non-Legal Personnel

### ● FINDING THE RIGHT NON-LAWYER MANAGER

- Education and certification important, but not a must;
- Communication skills essential;
- Organizational Skills are crucial;
- Analytical skills, common sense, logical thinker, and self-initiative;
- Professional attitude;
- Good writing skills imperative;
- Look within the organization first. Not all work requires a paralegal degree or certification;
- See Leveraging with Legal Assistants, Am. Bar Assoc., Section of Law Practice Management, Editor, Arthur Greene, (1993), Chapter 4 & 5.

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## To Use or Not To Use More Non-Legal Personnel

### ● Tasks Non-Lawyers Can Perform

- Traditional Functions of a Legal Assistant
    - Factual Investigation;
    - Locate and Interview Witnesses;
    - Draft Documents, Correspondence & Pleadings.
    - Conduct Legal Research;
- See Missouri v. Jenkins, 491, US 274, 109 S Ct 2463 (1989).

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## To Use or Not To Use More Non-Legal Personnel

### ● Tasks Non-Lawyers Can Perform

- Corporate Functions of a Legal Assistant
  - First point of contact for client/business unit;
  - Attend administrative agency meetings;
  - Due diligence in mergers and acquisitions;
  - 10K reporting – annual report;
  - Assist in discovery with outside counsel;
  - Assist in outside counsel budgets, monitor fee bills;
  - Project managers.

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## To Use or Not To Use More Non-Legal Personnel

### ● Things a Legal Assistant CANNOT Do

- Give legal advice;
- Represent a client in court;
- Set a fee;
- Accept a case;
- Sign pleadings or other documents;
- Engage in any other activity that constitutes the unauthorized practice of law.

See National Assn. of Legal Assistants website article on  
 “What is a Paralegal”

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## To Use or Not To Use More Non-Legal Personnel

### ● Ethical Consideration

- Exercise care in utilizing Legal Assistants
- Unauthorized practice of law – See NALA website article on Model Standards and Guidelines for Utilization of Legal Assistants  
[www.nala.org/](http://www.nala.org/)

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## To Use or Not To Use More Non-Legal Personnel

### ● ABA Model Guidelines

- 1. A lawyer is responsible for all of the professional actions of a paralegal performing services at the lawyer's direction and should take reasonable measures to ensure that the paralegal's conduct is consistent with the lawyer's obligations under the rules of professional conduct of the jurisdiction in which the lawyer practices.

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## To Use or Not To Use More Non-Legal Personnel

- 2. Provided the lawyer maintains responsibility for the work product, a lawyer may delegate to a paralegal any task normally performed by the lawyer except those tasks proscribed to a non-lawyer by statute, court rule, administrative rule or regulation, controlling authority, the applicable rule of professional conduct of the jurisdiction in which the lawyer practices, or these Guidelines

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## To Use or Not To Use More Non-Legal Personnel

- 3. A lawyer may not delegate to a paralegal:
  - Responsibility for establishing an attorney-client relationship.
  - Responsibility for establishing the amount of a fee to be charged for a legal service.
  - Responsibility for a legal opinion rendered to a client.

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### **To Use or Not To Use More Non-Legal Personnel**

- 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.

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### **To Use or Not To Use More Non-Legal Personnel**

- 5. A lawyer may identify paralegals by name and title on the lawyer's letterhead, and on business cards identifying the lawyer's firm.
- 6. A lawyer is responsible for taking reasonable measures to ensure that all client confidences are preserved by a paralegal.

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### **To Use or Not To Use More Non-Legal Personnel**

- 7. A lawyer should take reasonable measures to prevent conflicts of interest resulting from a paralegal's other employment or interests.
  
- 8. A lawyer may include a charge for the work performed by a paralegal in setting a charge and/or billing for legal services.

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### **To Use or Not To Use More Non-Legal Personnel**

- 9. A lawyer may not split legal fees with a paralegal nor pay a paralegal for the referral of legal business. A lawyer may compensate a paralegal based on the quantity and quality of the paralegal's work and the value of that work to a law practice, but the paralegal's compensation may not be contingent, by advance agreement, upon the outcome of a particular case or class of cases.

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## To Use or Not To Use More Non-Legal Personnel

- 10. A lawyer who employs a paralegal should facilitate the paralegal's participation in appropriate continuing education and pro bono publico activities.

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## To Use or Not To Use More Non-Legal Personnel

- **Effective Utilization of Legal Assistants**
  - Educate lawyers on the value of legal assistants;
  - Focus on delegating substantive legal matters not administrative or clerical tasks;
  - Define legal assistant's role;
  - Involve them in meetings;
  - Seek their input on decisions;
  - Determine each legal assistant's strengths and weaknesses;

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### **To Use or Not To Use More Non-Legal Personnel**

- Spend more time on training;
- Determine the proper balance of lawyers, paralegals, managers, and support staff;
- Altman-Weil, Inc. recommends a ratio of paralegals to lawyers of at least .033 ([www.altmanweil.com/](http://www.altmanweil.com/)).

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## **Thomas A. Boardman**

Deputy General Counsel  
3M Corporation

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## **To Use or Not To Use More Non-Legal Personnel**

**3M Company, formerly known as Minnesota Mining and Manufacturing Company, was incorporated in 1929 under the laws of the State of Delaware to continue operations begun in 1902. The Board of Directors of Minnesota Mining and Manufacturing Company approved changing the Company's name to "3M Company" effective April 8, 2002. The MMM ticker symbol remained the same.**

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## **To Use or Not To Use More Non-Legal Personnel**

- **3M Company**
  
- **\$20 Billion 2004 Estimated Sales (59% OUS)**
  
- **67,072 Employees**
- **(33,329 US; 33,743 OUS)**

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**To Use or Not To Use More Non-Legal Personnel**

- **3M Legal Affairs**
  
- **Office of General Counsel**
- **Office of Intellectual Property Counsel**
- **Central Compliance**

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**To Use or Not To Use More Non-Legal Personnel**

- **Office of General Counsel**
  
- **US Attorneys – 38**
  
- **OUS Attorneys – 45**

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## **To Use or Not To Use More Non-Legal Personnel**

### **● Office of Intellectual Property Counsel**

**● US Attorneys/Agents – 65**

**● OUS Attorneys/Agents – 5**

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## **To Use or Not To Use More Non-Legal Personnel**

**● Central Compliance**

**● Director -- Business Conduct and Compliance**

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## To Use or Not To Use More Non-Legal Personnel

### **3M OFFICE OF GENERAL COUNSEL PARALEGALS**

#### **NUMBER OF PARALEGALS**

<b>2001</b>	<b>7</b>
<b>2002</b>	<b>9</b>
<b>2003</b>	<b>11</b>
<b>2004</b>	<b>14</b>

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## To Use or Not To Use More Non-Legal Personnel

### **● JOB RESPONSIBILITIES IN 2004**

- 2 Litigation**
- 3 Non-litigation**
- 9 Combination of litigation and other responsibilities**

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## PARALEGAL NON-LITIGATION RESPONSIBILITIES

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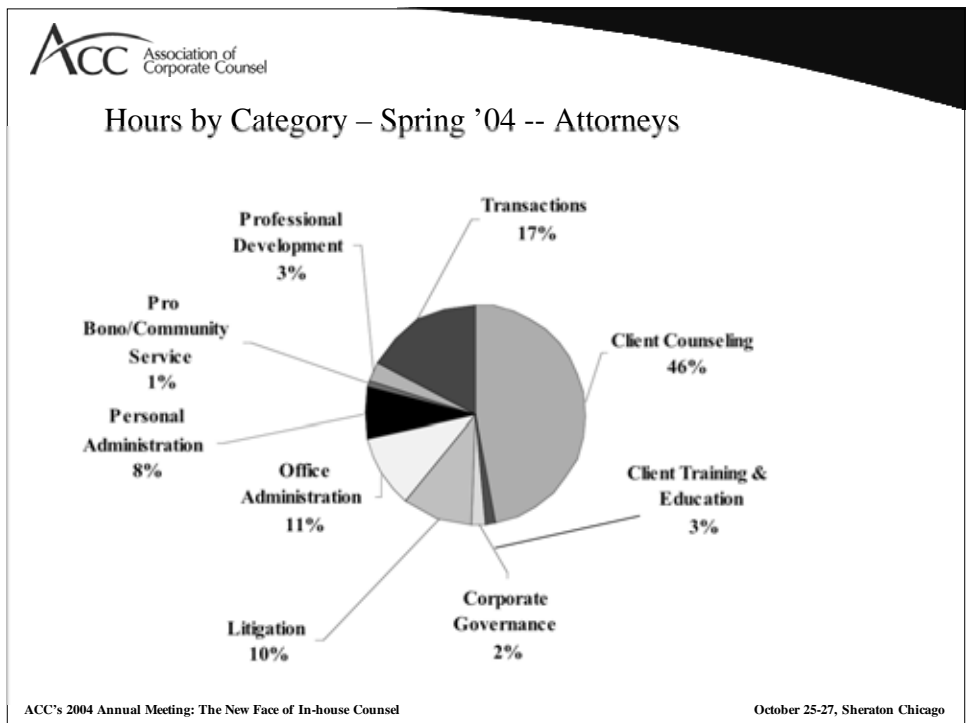
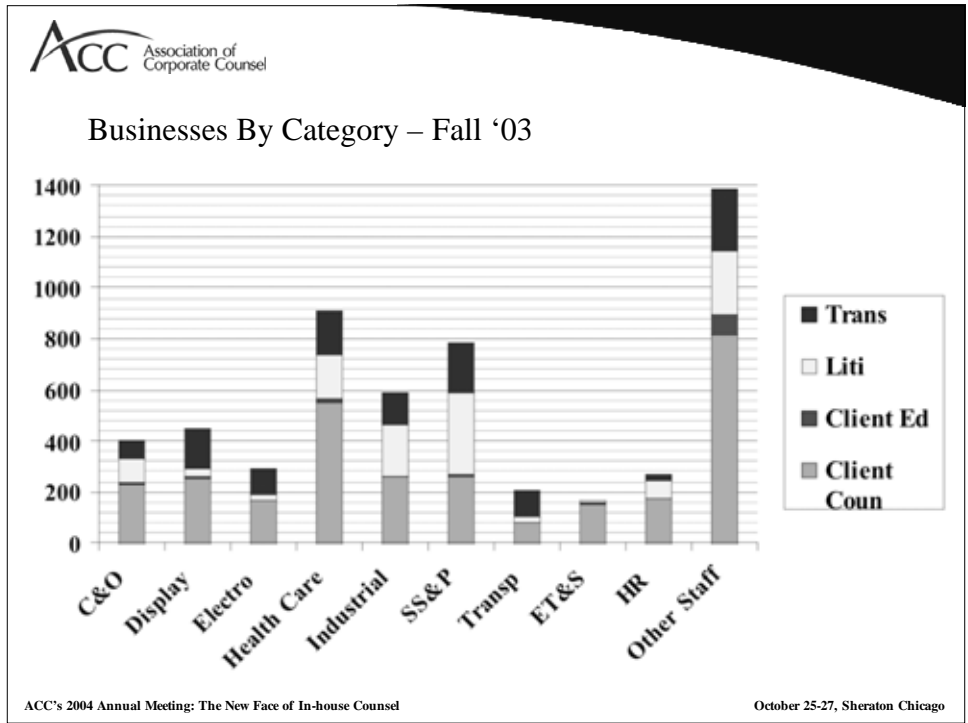


## Data Tracking System

- Purpose
  - To implement a measurement process of work done in OGC, to help drive decision-making with data
  - For future use in defining and prioritizing
    - Six Sigma Projects
    - eProductivity and Tech Initiatives
    - Allocating OGC resources
- Measurement scheme to track
  - What we do
  - How long it takes
  - Who the client is
  - Risk level

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## To Use or Not To Use More Non-Legal Personnel

- **Environmental – EPA responses, site inspections, environmental audits, contracts.**
- **Securities – SEC filings, proxy statements, registration statements.**

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## To Use or Not To Use More Non-Legal Personnel

- **Mergers and Acquisitions – due diligence, closings, Hart Scott Rodino filings, OUS premerger filings.**
- **Corporate – minutes, articles of incorporation, bylaws, creation and dissolution of US corporate entities.**
- **Immigration – H1B visa petitions, work visas, travel visas, green cards, permanent residency immigration matters.**

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## To Use or Not To Use More Non-Legal Personnel

- **Employment – EEOC charge responses, HIPAA matters.**
- **Business Conduct and Compliance – policies, investigations, training.**

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## To Use or Not To Use More Non-Legal Personnel

**Division work – legal signoff for all copy (e.g., product literature, advertisements, packaging, websites, sales presentations, journal articles), agreements, triage division inquiries and requests, legal research, client presentations including training. Participate in or lead division projects, e.g., review and modification of SOP's, complaint procedures, risk reviews.**

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## **Geneace Williams**

Managing Litigation Counsel  
McDonald's Corporation

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## **Maximize Your Legal Staff**

- Today Companies are looking to do more with less.
- Legal departments are not profit centers and must maximize the benefit of **all** staff.
- Think outside the box.

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## How to Get Outside the Box!

- Consider how you can use Non-lawyers to do legal work

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## Know what your staff is doing!

- Assess who is doing what
- What assignments go to attorneys?
- What assignments go to paralegals?
- What assignments go to administrative staff?
- Why are tasks being done as they are?

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## What Works for your Business?

- Determine what work must be done by an attorney -- based upon the law, not the way it has always been done
- Determine what work can be eliminated altogether

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## Stretch Yourself and Department!

- Challenge yourself to take some risks at trusting your staff
- Provide training opportunities for high performers

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## Environment is Key!

- Set Priorities
- Set Boundaries
- Communicate Clearly
- Meet regularly as a check and balance
- Establish a Team environment
- Reward Good Work!

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## What One Group Does

- Assigns legal files to high performing Paralegals.
- Provides templates for repetitive type work.
- Allows Paralegals to work directly with outside counsel.
- Paralegals work with outside counsel to draft responses to pleadings and discovery.
- In-house counsel makes final review and signs off.

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## What Paralegals are doing!

- Paralegals work with business units to locate witnesses
- Paralegals work with outside counsel and business units to locate documents
- Skilled Paralegals are handling crises situations
- Provide limited settlement authority
- Meet regularly with lawyers for guidance

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## Recognizing Boundaries

- Along with autonomy must train Paralegals how to spot issues that require direction and guidance of an attorney

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## Bottom Line!

- Good for the Company to more efficiently use all resources
- Train and use Paralegals and other non-legal managers to do work traditionally done by lawyers

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## After all...

- It makes Good Business Sense
- It will create career development opportunities for lawyers and paralegals

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## ABA MODEL GUIDELINES FOR THE UTILIZATION OF PARALEGAL SERVICES©

### *Preamble*

The Standing Committee on Paralegals of the American Bar Association drafted, and the ABA House of Delegates adopted, the ABA Model Guidelines for the Utilization of Legal Assistant Services in 1991. Most states have also prepared or adopted state-specific recommendations or guidelines for the utilization of services provided by paralegals.<sup>1</sup> All of these recommendations or guidelines are intended to provide lawyers with useful and authoritative guidance in working with paralegals.

This 2003 revision of the Model Guidelines is intended to reflect the legal and policy developments that have taken place since the first draft in 1991 and may assist states in revising or further refining their own recommendations and guidelines. Moreover, the Standing Committee is of the view that these and other guidelines on paralegal services will encourage lawyers to utilize those services effectively and promote the continued growth of the paralegal profession.<sup>2</sup>

The Standing Committee has based these 2003 revisions on the American Bar Association's Model Rules of Professional Conduct but has also attempted to take into account existing state recommendations and guidelines, decided authority and contemporary practice. Lawyers, of course, are to be first directed by Rule 5.3 of the Model Rules in the utilization of paralegal services, and nothing contained in these Model Guidelines is intended to be inconsistent with that rule. Specific ethical considerations and case law in particular states must also be taken into account by each lawyer that reviews these guidelines. In the commentary after each Guideline, we have attempted to identify the basis for the Guideline and any issues of which we are aware that the Guideline may present. We have also included selected references to state and paralegal association guidelines where we believed it would be helpful to the reader.

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<sup>1</sup> In 1986, the ABA Board of Governors approved a definition for the term "legal assistant." In 1997, the ABA amended the definition of legal assistant by adopting the following language: "A legal assistant or paralegal is a person qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible." To comport with current usage in the profession, these guidelines use the term "paralegal" rather than "legal assistant," however, lawyers should be aware that the terms legal assistant and paralegals are often used interchangeably.

<sup>2</sup> While necessarily mentioning paralegal conduct, lawyers are the intended audience of these Guidelines. The Guidelines, therefore, are addressed to lawyer conduct and not directly to the conduct of the paralegal. Both the National Association of Legal Assistants (NALA) and the National Federation of Paralegal Associations (NFPA) have adopted guidelines of conduct that are directed to paralegals. See NALA, "Code of Ethics and Professional Responsibility of the National Association of Legal Assistants, Inc." (adopted 1975, revised 1979, 1988 and 1995); NFPA, "Affirmation of Responsibility" (adopted 1977, revised 1981).

*Guideline 1: A lawyer is responsible for all of the professional actions of a paralegal performing services at the lawyer's direction and should take reasonable measures to ensure that the paralegal's conduct is consistent with the lawyer's obligations under the rules of professional conduct of the jurisdiction in which the lawyer practices.*

### **Comment to Guideline 1**

The Standing Committee on Paralegals ("Standing Committee") regards Guideline 1 as a comprehensive statement of general principle governing the utilization of paralegals in the practice of law. As such, the principles contained in Guideline 1 are part of each of the remaining Guidelines. Fundamentally, Guideline 1 expresses the overarching principle that although a lawyer may delegate tasks to a paralegal, a lawyer must always assume ultimate responsibility for the delegated tasks and exercise independent professional judgment with respect to all aspects of the representation of a client.

Under principles of agency law and the rules of professional conduct, lawyers are responsible for the actions and the work product of the nonlawyers they employ. Rule 5.3 of the Model Rules of Professional Conduct ("Model Rules")<sup>3</sup> requires that supervising lawyers ensure that the conduct of nonlawyer assistants is compatible with the lawyer's professional obligations. Ethical Consideration 3-6 of the Model Code encourages lawyers to delegate tasks to paralegals so that legal services can be rendered more economically and efficiently. Ethical Consideration 3-6, however, provides that such delegation is only proper if the lawyer "maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product." The adoption of Rule 5.3, which incorporates these principles, reaffirms this encouragement.

To conform to Guideline 1, a lawyer must give appropriate instruction to paralegals supervised by the lawyer about the rules governing the lawyer's professional conduct, and require paralegals to act in accordance with those rules. See Comment to Model Rule 5.3; see *also* National Association of Legal Assistant's Model Standards and Guidelines for the Utilization of Legal Assistants, Guidelines 1 and 4 (1985, revised 1990, 1997) (hereafter "NALA Guidelines"). Additionally, the lawyer must directly supervise paralegals employed by the lawyer to ensure that, in every circumstance, the paralegal is acting in a manner consistent with the lawyer's ethical and professional obligations. What constitutes appropriate instruction and supervision will differ from one state to another and the lawyer has the obligation to make adjustments accordingly.

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<sup>3</sup> The Model Rules were first adopted by the ABA House of Delegates in August of 1983. To date, some 43 states and two jurisdictions have adopted the Model Rules to govern the professional conduct of lawyers licensed in those states. However, because several states still utilize a version of the Model Code of Professional Responsibility ("Model Code"), these comments will refer to both the Model Rules and the predecessor Model Code (and to the Ethical Considerations and Disciplinary Rules found under the canons in the Model Codes). In 1997, the ABA formed the Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") to undertake a comprehensive review and revision of the Model Rules. The ABA House of Delegates completed its review of the Commission's recommended revisions in February 2002. Visit [www.abanet.org/cpr/jclr/jclr\\_home.html](http://www.abanet.org/cpr/jclr/jclr_home.html) for information regarding the status of each state supreme court's adoption of the Ethics 2000 revisions to the Model Rules.

***Guideline 2: Provided the lawyer maintains responsibility for the work product, a lawyer may delegate to a paralegal any task normally performed by the lawyer except those tasks proscribed to a nonlawyer by statute, court rule, administrative rule or regulation, controlling authority, the applicable rule of professional conduct of the jurisdiction in which the lawyer practices, or these Guidelines.***

### **Comment to Guideline 2**

The essence of the definition of the term “legal assistant” first adopted by the ABA in 1986<sup>4</sup> and subsequently amended in 1997<sup>5</sup> is that, so long as appropriate supervision is maintained, many tasks normally performed by lawyers may be delegated to paralegals. EC 3-6 under the Model Code mentioned three specific kinds of tasks that paralegals may perform under appropriate lawyer supervision: factual investigation and research, legal research, and the preparation of legal documents. Various states delineate more specific tasks in their guidelines including attending client conferences, corresponding with and obtaining information from clients, witnessing the execution of documents, preparing transmittal letters, and maintaining estate/guardianship trust accounts. See, e.g., Colorado Bar Association Guidelines for the Use of Paralegals (the Colorado Bar Association has adopted guidelines for the use of paralegals in 18 specialty practice areas including civil litigation, corporate law and estate planning); NALA Guideline 5.

While appropriate delegation of tasks is encouraged and a broad array of tasks is properly delegable to paralegals, improper delegation of tasks will often run afoul of a lawyer’s obligations under applicable rules of professional conduct. A common consequence of the improper delegation of tasks is that the lawyer will have assisted the paralegal in the unauthorized “practice of law” in violation of Rule 5.5 of the Model Rules, DR 3-101 of the Model Code, and the professional rules of most states. Neither the Model Rules nor the Model Code defines the “practice of law.” EC 3-5 under the Model Code gave some guidance by equating the practice of law to the application of the professional judgment of the lawyer in solving clients’ legal problems. This approach is consistent with that taken in ABA Opinion 316 (1967) which states: “A lawyer . . . may employ nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings as part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible for it to the client.”

As a general matter, most state guidelines specify that paralegals may not appear before courts, administrative tribunals, or other adjudicatory bodies unless the procedural rules of the adjudicatory body authorize such appearances. See, e.g., State Bar of Arizona, Committee on

<sup>4</sup> The 1986 ABA definition read: “A legal assistant is a person, qualified through education, training or work experience, who is employed or retained by a lawyer, law office, governmental agency, or other entity, in a capacity or function which involves the performance, under the ultimate direction and supervision of an attorney, of specifically-delegated substantive legal work, which work, for the most part, requires a sufficient knowledge of legal concepts that, absent such assistant the attorney would perform the task.”

<sup>5</sup> In 1997, the ABA amended the definition of legal assistant by adopting the following language: “A legal assistant or paralegal is a person qualified by education, training or work experience who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible.”

the Rules of Prof'l Conduct, Opinion No. 99-13 (December 1999) (attorney did not assist in unauthorized practice of law by supervising paralegal in tribal court where tribal court rules permit non-attorneys to be licensed tribal advocates).<sup>6</sup> Additionally, no state permits paralegals to conduct depositions or give legal advice to clients. *E.g.*, Guideline 2, Connecticut Bar Association Guidelines for Lawyers Who Employ or Retain Legal Assistants (the "Connecticut Guidelines"); Guideline 2, State Bar of Michigan Guidelines for Utilization of Legal Assistants; State Bar of Georgia, State Disciplinary Board Advisory Opinion No. 21 (September 16, 1977); *Doe v. Condon*, 532 S.E.2d 879 (S.C. 2000) (it is the unauthorized practice of law for a paralegal to conduct educational seminars and answer estate planning questions because the paralegal will be implicitly advising participants that they require estate planning services). See also NALA Guidelines II, III, and V.

Ultimately, apart from the obvious tasks that virtually all states argue are proscribed to paralegals, what constitutes the "practice of law" is governed by state law and is a fact specific question. See, *e.g.*, Louisiana Rules of Prof'l Conduct Rule 5.5 which sets out specific tasks considered to be the "practice of law" by the Supreme Court of Louisiana. Thus, some tasks that have been specifically prohibited in some states are expressly delegable in others. *Compare*, Guideline 2, Connecticut Guidelines (permitting paralegal to attend real estate closings even though no supervising lawyer is present provided that the paralegal does not render opinion or judgment about execution of documents, changes in adjustments or price or other matters involving documents or funds) *and* The Florida Bar, Opinion 89-5 (November 1989) (permitting paralegal to handle real estate closing at which no supervising lawyer is present provided, among other things, that the paralegal will not give legal advice or make impromptu decisions that should be made by a lawyer) *with* Supreme Court of Georgia, Formal Advisory Opinion No. 86-5 (May 1989) (closing of real estate transactions constitutes the practice of law and it is ethically improper for a lawyer to permit a paralegal to close the transaction). It is thus incumbent on the lawyer to determine whether a particular task is properly delegable in the jurisdiction at issue.

Once the lawyer has determined that a particular task is delegable consistent with the professional rules, utilization guidelines, and case law of the relevant jurisdiction, the key to Guideline 2 is proper supervision. A lawyer should start the supervision process by ensuring that the paralegal has sufficient education, background and experience to handle the task being assigned. The lawyer should provide adequate instruction when assigning projects and should also monitor the progress of the project. Finally, it is the lawyer's obligation to review the completed project to ensure that the work product is appropriate for the assigned task. See Guideline 1, Connecticut Guidelines; See also, *e.g.*, *Spencer v. Steinman*, 179 F.R.D. 484 (E.D. Penn. 1998) (lawyer sanctioned under Rule 11 for paralegal's failure to serve subpoena duces tecum on parties to the litigation because the lawyer "did not assure himself that [the paralegal] had adequate training nor did he adequately supervise her once he assigned her the task of issuing subpoenas").

Serious consequences can result from a lawyer's failure to properly delegate tasks to or to supervise a paralegal properly. For example, the Supreme Court of Virginia upheld a malpractice verdict against a lawyer based in part on negligent actions of a paralegal in

<sup>6</sup> It is important to note that pursuant to federal or state statute, paralegals are permitted to provide direct client representation in certain administrative proceedings. While this does not obviate the lawyer's responsibility for the paralegal's work, it does change the nature of the lawyer's supervision of the paralegal. The opportunity to use such paralegal services has particular benefits to legal services programs and does not violate Guideline 2. See *generally* ABA Standards for Providers of Civil Legal Services to the Poor Std. 6.3, at 6.17-6.18 (1986).



performing tasks that evidently were properly delegable. *Musselman v. Willoughby Corp.*, 230 Va. 337, 337 S.E. 2d 724 (1985). See also C. Wolfram, *Modern Legal Ethics* (1986), at 236, 896. Disbarment and suspension from the practice of law have resulted from a lawyer's failure to properly supervise the work performed by paralegals. See *Matter of Disciplinary Action Against Nassif*, 547 N.W.2d 541 (N.D. 1996) (disbarment for failure to supervise which resulted in the unauthorized practice of law by office paralegals); *Attorney Grievance Comm'n of Maryland v. Hallmon*, 681 A.2d 510 (Md. 1996) (90-day suspension for, among other things, abdicating responsibility for a case to paralegal without supervising or reviewing the paralegal's work). Lawyers have also been subject to monetary and other sanctions in federal and state courts for failing to properly utilize and supervise paralegals. See *In re Hessinger & Associates*, 192 B.R. 211 (N.D. Cal. 1996) (bankruptcy court directed to reevaluate its \$100,000 sanction but district court finds that law firm violated Rule 3-110(A) of the California Rules of Professional Conduct by permitting bankruptcy paralegals to undertake initial interviews, fill out forms and complete schedules without attorney supervision).

Finally, it is important to note that although the attorney has the primary obligation to not permit a nonlawyer to engage in the unauthorized practice of law, some states have concluded that a paralegal is not relieved from an independent obligation to refrain from illegal conduct and to work directly under an attorney's supervision. See *In re Opinion No. 24 of the Committee on the Unauthorized Practice of Law*, 607 A.2d 962, 969 (N.J. 1992) (a "paralegal who recognizes that the attorney is not directly supervising his or her work or that such supervision is illusory because the attorney knows nothing about the field in which the paralegal is working must understand that he or she is engaged in the unauthorized practice of law"); Kentucky Supreme Court Rule 3.7 (stating that "the paralegal does have an independent obligation to refrain from illegal conduct"). Additionally, paralegals must also familiarize themselves with the specific statutes governing the particular area of law with which they might come into contact while providing paralegal services. See, e.g., 11 U.S.C. § 110 (provisions governing nonlawyer preparers of bankruptcy petitions); *In Re Moffett*, 263 B.R. 805 (W.D. Ky. 2001) (nonlawyer bankruptcy petition preparer fined for advertising herself as "paralegal" because that is prohibited by 11 U.S.C. § 110(f)(1)). Again, the lawyer must remember that any independent obligation a paralegal might have under state law to refrain from the unauthorized practice of law does not in any way diminish or vitiate the lawyer's obligation to properly delegate tasks and supervise the paralegal working for the lawyer.

**Guideline 3: A lawyer may not delegate to a paralegal:**

- (a) **Responsibility for establishing an attorney-client relationship.**
- (b) **Responsibility for establishing the amount of a fee to be charged for a legal service.**
- (c) **Responsibility for a legal opinion rendered to a client.**

**Comment to Guideline 3**

Model Rule 1.4 and most state codes require lawyers to communicate directly with their clients and to provide their clients information reasonably necessary to make informed decisions and to effectively participate in the representation. While delegation of legal tasks to nonlawyers may benefit clients by enabling their lawyers to render legal services more economically and efficiently, Model Rule 1.4 and Ethical Consideration 3-6 under the Model Code emphasize that delegation is proper only if the lawyer "maintains a direct relationship with his client, supervises the delegated work and has complete professional responsibility for the work product." The National Association of Legal Assistants ("NALA"), Code of Ethics and Professional Responsibility, Canon 2, echoes the Model Rule when it states: "A legal assistant may perform

any task which is properly delegated and supervised by an attorney as long as the attorney is ultimately responsible to the client, maintains a direct relationship with the client, and assumes professional responsibility for the work product.” Most state guidelines also stress the paramount importance of a direct attorney-client relationship. See Ohio EC 3-6 and New Mexico Rule 20-106. The direct personal relationship between client and lawyer is critical to the exercise of the lawyer’s trained professional judgment.

Fundamental to the lawyer-client relationship is the lawyer’s agreement to undertake representation and the related fee arrangement. The Model Rules and most states require lawyers to make fee arrangements with their clients and to clearly communicate with their clients concerning the scope of the representation and the basis for the fees for which the client will be responsible. Model Rule 1.5 and Comments. Many state guidelines prohibit paralegals from “setting fees” or “accepting cases.” See, e.g., Pennsylvania Eth. Op. 98-75, 1994 Utah Eth. Op. 139. NALA Canon 3 states that a paralegal must not establish attorney-client relationships or set fees.

EC 3-5 states: “[T]he essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; and thus, the public interest will be better served if only lawyers are permitted to act in matters involving professional judgment.” Clients are entitled to their lawyers’ professional judgment and opinion. Paralegals may, however, be authorized to communicate a lawyer’s legal advice to a client so long as they do not interpret or expand on that advice. Typically, state guidelines phrase this prohibition in terms of paralegals being forbidden from “giving legal advice” or “counseling clients about legal matters.” See, e.g., New Hampshire Rule 35, Sub-Rule 1, Kentucky SCR 3.700, Sub-Rule 2. NALA Canon 3 states that a paralegal must not give legal opinions or advice. Some states have more expansive wording that prohibits paralegals from engaging in any activity that would require the exercise of independent legal judgment. See, e.g., New Mexico Rule 20-103. Nevertheless, it is clear that all states and the Model Rules encourage direct communication between clients and a paralegal insofar as the paralegal is performing a task properly delegated by a lawyer. It should be noted that a lawyer who permits a paralegal to assist in establishing the attorney-client relationship, in communicating the lawyer’s fee, or in preparing the lawyer’s legal opinion is not delegating responsibility for those matters and, therefore, is not in violation of this guideline.

***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 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 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.

***Guideline 6: A lawyer is responsible for taking reasonable measures to ensure that all client confidences are preserved by a paralegal.***

#### **Comment to Guideline 6**

A fundamental principle in the client-lawyer relationship is that the lawyer must not reveal information relating to the representation. Model Rule 1.6. A client must feel free to discuss whatever he/she wishes with his/her lawyer, and a lawyer must be equally free to obtain information beyond that volunteered by his/her client. The ethical obligation of a lawyer to hold inviolate the confidences and secrets of the client facilitates the full development of the facts essential to proper representation of the client and encourages laypersons to seek early legal assistance. EC 4-1, Model Code. “It is a matter of common knowledge that the normal operation of a law office exposes confidential professional information to nonlawyer employees of the office. . . this obligates a lawyer to exercise care in selecting and training employees so that the sanctity of all confidences and secrets of clients may be preserved.” EC 4-2, Model Code.

Model Rule 1.6 applies not only to matters communicated in confidence by the client, but also to all information relating to the representation, whatever its source. Pursuant to the rule, a lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. Further, a lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or “other persons who are participating in the representation of the client or who are subject to the lawyer supervision.” Model Rule 1.6, Comment 15. It is therefore the lawyer’s obligation to instruct clearly and to take reasonable steps to ensure that paralegals preserve client confidences.

Model Rule 5.3 requires a lawyer having direct supervisory authority over a paralegal to make reasonable efforts to ensure that the person’s conduct is compatible with the professional

obligations of the lawyer. Comment 1 to Model Rule 5.3 makes it clear that a lawyer must give “such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to the representation of the client, and should be responsible for their work product.” Disciplinary Rule 4-101(D) under the Model Code provides that: “A lawyer shall exercise reasonable care to prevent his employees, associates and others whose services are utilized by him from disclosing or using confidences or secrets of a client. . . .” Nearly all states that have guidelines for utilization of paralegals require the lawyer “to instruct legal assistants concerning client confidences and to exercise care to ensure the legal assistants comply with the Code in this regard.” See, e.g. New Hampshire Rule 35, Sub-Rule 4; Kentucky Supreme Court Rule 3.700, Sub-Rule 4; Indiana Rules of Prof'l Responsibility, Guideline 9.10.

Model Rule 5.3 further extends responsibility for the professional conduct of paralegals to a “partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm.” Lawyers with managerial authority within a law firm are required to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that paralegals in the firm act in a way compatible with the relevant rules of professional conduct. Model Rule 5.3(a), Comment 2.

The NFPA Model Code of Professional Ethics and Responsibility and Guidelines for Enforcement, EC-1.5 states that a paralegal “shall preserve all confidential information provided by the client or acquired from other sources before, during, and after the course of the professional relationship.” Further, NFPA EC-1.5(a) requires a paralegal to be aware of and abide by all legal authority governing confidential information in the jurisdiction in which the paralegal practices and prohibits any use of confidential information to the disadvantage of a client. Likewise, the NALA Code of Ethics and Professional Responsibility, Canon 7 states that, “A legal assistant must protect the confidences of the client and must not violate any rule or statute now in effect or hereafter enacted controlling the doctrine of privileged communications between a client and an attorney.” Likewise, NALA Guidelines state that paralegals should “preserve the confidences and secrets of all clients; and understand the attorney’s code of professional responsibility and these guidelines in order to avoid any action which would involve the attorney in a violation of that code, or give the appearance of professional impropriety.” NALA Guideline 1 and Comment.

***Guideline 7: A lawyer should take reasonable measures to prevent conflicts of interest resulting from a paralegal’s other employment or interests.***

#### **Comment to Guideline 7**

Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client. Model Rule 1.7, comment 1. The independent judgment of a lawyer should be exercised solely for the benefit of his client and free from all compromising influences and loyalties. EC 5.1. Model Rules 1.7 through 1.13 address a lawyer’s responsibility to prevent conflicts of interest and potential conflicts of interest. Model Rule 5.3 requires lawyers with direct supervisory authority over a paralegal and partners/lawyers with managerial authority within a law firm to make reasonable efforts to ensure that the conduct of the paralegals they employ is compatible with their own professional obligations, including the obligation to prevent conflicts of interest. Therefore, paralegals should be instructed to inform the supervising lawyer and the management of the firm of any interest that could result in a conflict of interest or even give the appearance of a conflict. The guideline intentionally speaks to “other employment” rather than only past employment because there are instances where paralegals are employed by more than one law firm at the same time. The guideline’s reference to “other interests” is intended to include personal relationships as well as instances where the paralegal may have a

financial interest (i.e., as a stockholder, trust beneficiary, or trustee, etc.) that would conflict with the clients in the matter in which the lawyer has been employed.

“Imputed Disqualification Arising from Change in Employment by Non-Lawyer Employee,” ABA Informal Opinion 1526 (1988), defines the duties of both the present and former employing lawyers and reasons that the restrictions on paralegals’ employment should be kept to “the minimum necessary to protect confidentiality” in order to prevent paralegals from being forced to leave their careers, which “would disserve clients as well as the legal profession.” The Opinion describes the attorney’s obligations (1) to caution the paralegal not to disclose any information and (2) to prevent the paralegal from working on any matter on which the paralegal worked for a prior employer or respecting which the employee has confidential information.

Disqualification is mandatory where the paralegal gained information relating to the representation of an adverse party while employed at another law firm and has revealed it to lawyers in the new law firm, where screening of the paralegal would be ineffective, or where the paralegal would be required to work on the other side of the same or substantially related matter on which the paralegal had worked while employed at another firm. When a paralegal moves to an opposing firm during ongoing litigation, courts have held that a rebuttable presumption exists that the paralegal will share client confidences. *See, e.g., Phoenix v. Founders*, 887 S.W.2d 831, 835 (Tex. 1994) (the presumption that confidential information has been shared may be rebutted upon showing that sufficient precautions were taken by the new firm to prevent disclosure including that it (1) cautioned the newly-hired paralegal not to disclose any information relating to representation of a client of the former employer; (2) instructed the paralegal not to work on any matter on which he or she worked during prior employment or about which he or she has information relating to the former employer’s representation; and (3) the new firm has taken reasonable measures to ensure that the paralegal does not work on any matter on which he or she worked during the prior employment, absent the former client’s consent). But, adequate and effective screening of a paralegal may prevent disqualification of the new firm. Model Rule 1.10, comment 4. Adequate and effective screening gives a lawyer and the lawyer’s firm the opportunity to build and enforce an “ethical wall” to preclude the paralegal from any involvement in the client matter that is the subject of the conflict and to prevent the paralegal from receiving or disclosing any information concerning the matter. ABA Informal Opinion 1526 (1988). The implication of the ABA’s informal opinion is that if the lawyer, and the firm, do not implement a procedure to effectively screen the paralegal from involvement with the litigation, and from communication with attorneys and/or co-employees concerning the litigation, the lawyer and the firm may be disqualified from representing either party in the controversy. *See In re Complex Asbestos Litigation*, 232 Cal. App. 3d 572, 283 Cal. Rptr. 732 (1991) (law firm disqualified from nine pending asbestos cases because it failed to screen paralegal that possessed attorney-client confidences from prior employment by opposing counsel).

Some courts hold that paralegals are subject to the same rules governing imputed disqualification as are lawyers. In jurisdictions that do not recognize screening devices as adequate protection against a lawyer’s potential conflict in a new law firm, neither a “cone of silence” nor any other screening device will be recognized as a proper or effective remedy where a paralegal who has switched firms possesses material and confidential information. *Zimmerman v. Mahaska Bottling Company*, 19 P.3d 784, 791-792 (Kan. 2001) (“[W]here screening devices are not allowed for lawyers, they are not allowed for non-lawyers either.”); *Koulisis v. Rivers*, 730 So. 2d 289 (Fla. Dist. Ct. App. 1999) (firm that hired paralegal with actual knowledge of protected information could not defeat disqualification by showing steps taken to screen the paralegal from the case); Ala. Bar R-02-01, 63 Ala. Law 94 (2002). These cases do not mean that disqualification is mandatory whenever a nonlawyer moves from one private firm to an opposing firm while there is pending litigation. Rather, a firm may still avoid

disqualification if (1) the paralegal has not acquired material or confidential information regarding the litigation, or (2) if the client of the former firm waives disqualification and approves the use of a screening device or ethical wall. *Zimmerman*, 19 P.3d at 822.

Other authorities, consistent with Model Rule 1.10(a), differentiate between lawyers and nonlawyers. In *Stewart v. Bee Dee Neon & Signs, Inc.*, 751 So. 2d 196 (Fla. Dist. Ct. App. 2000) the court disagreed with the *Koulisis* rule that paralegals should be held to the same conflicts analyses as lawyers when they change law firms. In *Stewart*, a secretary moved from one law firm to the opposing firm in mid-litigation. While Florida would not permit lawyer screening to defeat disqualification under these circumstance, the *Stewart* court emphasized that "it is important that non-lawyer employees have as much mobility in employment opportunity as possible" and that "any restrictions on the non-lawyer's employment should be held to the minimum necessary to protect confidentiality of client information." *Stewart*, 751 So. 2d at 203 (citing ABA Informal Opinion 1526 (1988)). The analysis in *Stewart* requires the party moving for disqualification to prove that the nonlawyer actually has confidential information, and that screening has not and can not be effectively implemented. *Id.* at 208. In *Leibowitz v. The Eighth Judicial District Court of the State of Nevada*, 79 P.3d 515 (2003), the Supreme Court of Nevada overruled its earlier decision in *Ciaffone v. District Court*, 113 Nev. 1165, 945 P.2d 950 (1997), which held that screening of nonlawyer employees would not prevent disqualification. In *Leibowitz*, the court held that when a firm identifies a conflict, it has an absolute duty to screen and to inform the adversarial party about the hiring and the screening mechanisms. The Court emphasized that disqualification is required when confidential information has been disclosed, when screening would be ineffective, or when the affected employee would be required to work on the case in question.

Still other courts that approve screening for paralegals compare paralegals to former government lawyers who have neither a financial interest in the outcome of a particular litigation, nor the choice of which clients they serve. *Smart Industries Corp. v. Superior Court County of Yuma*, 876 P.2d 1176, 1184 (Ariz. App. 1994) ("We believe that this reasoning for treating government attorneys differently in the context of imputed disqualification applies equally to nonlawyer assistants . . ."); *accord, Hayes v. Central States Orthopedic Specialists, Inc.*, 51 P.3d 562 (Okla. 2002); Model Rule 1.11(b) and (c).

Comment 4 to Model Rule 1.10(a) states that the rule does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a paralegal. But, paralegals "ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect." *Id.*

Because disqualification is such a drastic consequence for lawyers and their firms, lawyers must be especially attuned to controlling authority in the jurisdictions where they practice. *See generally*, Steve Morris and Christina C. Stipp, Ethical Conflicts Facing Litigators, ALI SH009ALI-ABA 449, 500-502 (2002).

To assist lawyers and their firms in discharging their professional obligations under the Model Rules, the NALA Guidelines requires paralegals "to take any and all steps necessary to prevent conflicts of interest and fully disclose such conflicts to the supervising attorney" and warns paralegals that any "failure to do so may jeopardize both the attorney's representation and the case itself." NALA, Comment to Guideline 1. NFPA Model Code of Professional Ethics and Responsibility and Guidelines for Enforcement, EC-1.6 requires paralegals to avoid conflicts of interest and to disclose any possible conflicts to the employer or client, as well as to the prospective employers or clients. NFPA, EC-1.6 (a)-(g).

***Guideline 8: A lawyer may include a charge for the work performed by a paralegal in setting a charge and/or billing for legal services.***

**Comment to Guideline 8**

In *Missouri v. Jenkins*, 491 U.S. 274 (1989), the United States Supreme Court held that in setting a reasonable attorney's fee under 28 U.S.C. § 1988, a legal fee may include a charge for paralegal services at "market rates" rather than "actual cost" to the attorneys. In its opinion, the Court stated that, in setting recoverable attorney fees, it starts from "the self-evident proposition that the 'reasonable attorney's fee' provided for by statute should compensate the work of paralegals, as well as that of attorneys." *Id.* at 286. This statement should resolve any question concerning the propriety of setting a charge for legal services based on work performed by a paralegal. See also, Alaska Rules of Civil Procedure Rule 79; Florida Statutes Title VI, Civil Practice & Procedure, 57.104; North Carolina Guideline 8; Comment to NALA Guideline 5; Michigan Guideline 6. In addition to approving paralegal time as a compensable fee element, the Supreme Court effectively encouraged the use of paralegals for the cost-effective delivery of services. It is important to note, however, that *Missouri v. Jenkins* does not abrogate the attorney's responsibilities under Model Rule 1.5 to set a reasonable fee for legal services, and it follows that those considerations apply to a fee that includes a fee for paralegal services. See also, South Carolina Ethics Advisory Opinion 96-13 (a lawyer may use and bill for the services of an independent paralegal so long as the lawyer supervises the work of the paralegal and, in billing the paralegal's time, the lawyer discloses to the client the basis of the fee and expenses).

It is important to note that a number of court decisions have addressed or otherwise set forth the criteria to be used in evaluating whether paralegal services should be compensated. Some requirements include that the services performed must be legal in nature rather than clerical, the fee statement must specify in detail the qualifications of the person performing the service to demonstrate that the paralegal is qualified by education, training or work to perform the assigned work, and evidence that the work performed by the paralegal would have had to be performed by the attorney at a higher rate. Because considerations and criteria vary from one jurisdiction to another, it is important for the practitioner to determine the criteria required by the jurisdiction in which the practitioner intends to file a fee application seeking compensation for paralegal services.

***Guideline 9: A lawyer may not split legal fees with a paralegal nor pay a paralegal for the referral of legal business. A lawyer may compensate a paralegal based on the quantity and quality of the paralegal's work and the value of that work to a law practice, but the paralegal's compensation may not be contingent, by advance agreement, upon the outcome of a particular case or class of cases.***

**Comment to Guideline 9**

Model Rule 5.4 and DR 3-102(A) and 3-103(A) under the Model Code clearly prohibits fee "splitting" with paralegals, whether characterized as splitting of contingent fees, "forwarding" fees, or other sharing of legal fees. Virtually all guidelines adopted by state bar associations have continued this prohibition in one form or another. See, e.g., Connecticut Guideline 7, Kentucky Supreme Court Rule 3.700, Sub-Rule 5; Michigan Guideline 7; Missouri Guideline III; North Carolina Guideline 8; New Hampshire Rule 35, Sub-Rules 5 and 6; R.I. Sup. Ct. Art. V. R. 5.4; South Carolina Guideline V. It appears clear that a paralegal may not be compensated on a contingent basis for a particular case or be paid for "signing up" clients for representation.



Having stated this prohibition, however, the guideline attempts to deal with the practical consideration of how a paralegal may be compensated properly by a lawyer or law firm. The linchpin of the prohibition seems to be the advance agreement of the lawyer to “split” a fee based on a pre-existing contingent arrangement.<sup>7</sup> See, e.g., *Matter of Struthers*, 877 P.2d 789 (Ariz. 1994) (an agreement to give to nonlawyer all fees resulting from nonlawyer’s debt collection activities constitutes improper fee splitting); *Florida Bar v. Shapiro*, 413 So. 2d 1184 (Fla. 1982) (payment of contingent salary to nonlawyer based on total amount of fees generated is improper); State Bar of Montana, Op. 95-0411 (1995) (lawyer paid on contingency basis for debt collection cannot share that fee with a nonlawyer collection agency that worked with lawyer).

There is no general prohibition against a lawyer who enjoys a particularly profitable period recognizing the contribution of the paralegal to that profitability with a discretionary bonus so long as the bonus is based on the overall success of the firm and not the fees generated from any particular case. See, e.g., Philadelphia Bar Ass’n Prof. Guidance Comm., Op. 2001-7 (law firm may pay nonlawyer employee a bonus if bonus is not tied to fees generated from a particular case or class of cases from a specific client); Va. St. Bar St. Comm. of Legal Ethics, Op. 885 (1987) (a nonlawyer may be paid based on the percentage of profits from all fees collected by the lawyer). Likewise, a lawyer engaged in a particularly profitable specialty of legal practice is not prohibited from compensating the paralegal who aids materially in that practice more handsomely than the compensation generally awarded to paralegals in that geographic area who work in law practices that are less lucrative. Indeed, any effort to fix a compensation level for paralegals and prohibit great compensation would appear to violate the federal antitrust laws. See, e.g., *Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975).

In addition to the prohibition on fee splitting, a lawyer also may not provide direct or indirect remuneration to a paralegal for referring legal matters to the lawyer. See Model Guideline 9; Connecticut Guideline 7; Michigan Guideline 7; North Carolina Guideline 8. See also, *Committee on Prof’l Ethics & Conduct of Iowa State Bar Ass’n v. Lawler*, 342 N.W. 2d 486 (Iowa 1984) (reprimand for lawyer payment of referral fee); *Trotter v. Nelson*, 684 N.E.2d 1150 (Ind. 1997) (wrongful to pay to nonlawyer five percent of fees collected from a case referred by the nonlawyer).

***Guideline 10: A lawyer who employs a paralegal should facilitate the paralegal’s participation in appropriate continuing education and pro bono publico activities.***

#### **Comment to Guideline 10**

For many years the Standing Committee on Paralegals has advocated that formal paralegal education generally improves the legal services rendered by lawyers employing paralegals and provides a more satisfying professional atmosphere in which paralegals may work. Recognition of the employing lawyer’s obligation to facilitate the paralegal’s continuing professional education is, therefore, appropriate because of the benefits to both the law practice and the paralegals and is consistent with the lawyer’s own responsibility to maintain professional competence under Model Rule 1.1. See also EC 6-2 of the Model Code. Since these Guidelines were first adopted by the House of Delegates in 1991, several state bar associations

<sup>7</sup> In its Rule 5.4 of the Rules of Professional Conduct, the District of Columbia permits lawyers to form legal service partnerships that include non-lawyer participants. Comments 5 and 6 to that rule, however, state that the term “nonlawyer participants” should not be confused with the term “nonlawyer assistants” and that “[n]onlawyer assistants under Rule 5.3 do not have managerial authority or financial interests in the organization.”

have adopted guidelines that encourage lawyers to promote the professional development and continuing education of paralegals in their employ, including Connecticut, Idaho, Indiana, Michigan, New York, Virginia, Washington, and West Virginia. The National Association of Legal Assistants Code of Ethics and Professional Responsibility, Canon 6, calls on paralegals to “maintain a high degree of competency through education and training . . . and through continuing education. . . .” and the National Federation of Paralegal Associations Model Code of Ethics and Professional Responsibility, Canon 1.1, states that a paralegal “shall achieve and maintain a high level of competence” through education, training, work experience and continuing education.

The Standing Committee is of the view that similar benefits accrue to the lawyer and paralegal if the paralegal is included in the pro bono publico legal services that a lawyer has a clear obligation to provide under Model Rule 6.1 and, where appropriate, the paralegal is encouraged to provide such services independently. The ability of a law firm to provide more pro bono publico services is enhanced if paralegals are included. Recognition of the paralegal's role in such services is consistent with the role of the paralegal in the contemporary delivery of legal services generally and is also consistent with the lawyer's duty to the legal profession under Canon 2 of the Model Code. Several state bar associations, including Connecticut, Idaho, Indiana, Michigan, Washington and West Virginia, have adopted a guideline that calls on lawyers to facilitate paralegals' involvement in pro bono publico activities. One state, New York, includes pro bono work under the rubric of professional development. (See Commentary to Guideline VII of the New York State Bar Association Guidelines for the Utilization by Lawyers of the Service of Legal Assistants, adopted June 1997.) The National Federation of Paralegal Associations Model Code of Ethics and Professional Responsibility and Guidelines for Enforcement, Canon 1.4, states that paralegals “shall serve the public interest by contributing to the improvement of the legal system and delivery of quality legal services, including pro bono publico legal services.” In the accompanying Ethical Consideration 1.4(d), the Federation asks its members to aspire to contribute at least 24 hours of pro bono services annually.

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Only the text of the Guidelines has been formally adopted by the American Bar Association House of Delegates as official policy. The Standing Committee on Paralegals has adopted the accompanying commentary.

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## **LEADING PRACTICES IN USING NON-LAWYER PERSONNEL TO HELP PERFORM LEGAL FUNCTIONS: What Companies are Doing**

**Part of an Ongoing Series of  
ACC's "Leading Practices Profiles" <sup>SM</sup>**  
<http://www.acca.com/vl/practiceprofiles.php>

The challenge: do more, do it well, do it quickly, do it with fewer in-house staff, and – above all! – keep costs down. Such is the reality facing law departments and their leaders today. Managing the challenge is a balancing act, and success comes from using resources effectively, developing efficient processes, and thinking creatively to develop strategies and practices that minimize re-work and maximize results.

But businesses keep growing, regulations keep coming, companies expand into increasing numbers of new markets, and legal issues are more complex. For those who must handle the growing load without adding more lawyers, and, in some cases, with even fewer lawyers, establishing an effective suite of strategies for efficiently delivering quality in-house legal services is a huge asset.

Where to begin? Each law department is different. And, for each company, the business drivers are different. Some questions that might serve as a starting point include: How are lawyers spending their time? Are there other personnel within the law department or within the company that can perform certain tasks with appropriate tools and training? Can technology help expand the law department's reach, improve efficiencies, and serve as a medium to support new ways of doing things? Are there emerging business initiatives or priorities that will require the department to refocus lawyer attention away from traditional service lines? Are there practices or solutions that other in-house law departments have successfully implemented that might work well for your company?

This profile is intended to address some of these issues. A number of innovative law departments are finding new ways to shift work traditionally performed by lawyers to paralegals for handling with guidance and supervision from lawyers. Others focus on shifting some of their work to the client functions served by the work, given training from the law department and using tools such as document templates, alternate clauses, and guidelines to help clients take the lead. Still others are looking to new technologies to

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assist: as a broad-based medium for compliance training, and to facilitate knowledge sharing, minimize re-work, and more. Departmental administrative support functions may be centralized to shift work to a skilled group that can focus on those matters. These are only a few examples of the kinds of ideas at play in busy law departments around the globe.

In short, the purpose of this profile is to look at how some law departments implement strategies to encourage non-lawyers to take the initiative on matters with a legal component, and which also encourage in-house lawyers to share and team their work more effectively, resulting in increased performance results, and perhaps even as importantly, increased personal satisfactions for lawyers in their work.

*[Important Note: In addressing these issues, lawyers must keep in mind various tensions that may arise as a result of working with non-lawyers on what may be construed as legal work. Remember: not all work traditionally done by lawyers is – by definition -- legal work, but the definition of the practice of law is only outlined in the professional/ethics rules of a few states, and even then, the definitions are usually broad enough to be unhelpful to the lawyer struggling with whether or not it would be professionally problematic to off-load work to a non-lawyer. It bears repeating that each state's version of Model Rule of Professional Responsibility 5.5 (the Unauthorized Practice of Law, or UPL provisions) prohibits lawyers from practicing law in violation of the local rules, or aiding others in doing so. (Note that while the rules may be numbered differently in your jurisdiction, your state has a version of 5.5 on its books.) Practicing without a license is a violation of the rules, and so aiding a non-lawyer in providing legal services to a client without a license can be a problem not only for the non-lawyer provider of those services, but for the lawyer who aids or empowers him.*

*Lawyers who simply “offload” work traditionally done by the law department, but which is not necessarily the practice of law should have no professional concerns about doing so. To offer an example of how difficult this analysis can be, let's look at contract management. Lawyers often draft and negotiate contracts for clients and when they do so, they are engaged most undoubtedly in the practice of law. But there is nothing to prevent a business person from negotiating and drafting their own agreements; non-lawyers do that all the time. So what happens if lawyers draft “form” contracts with alternate clauses that business people can adapt as they go along (without lawyer supervision) to manage their own contractual issues with suppliers, partners and others? Many of those offering their experiences through this profile will suggest that such a practice is not only efficient, but in the client's best interests – clients were off negotiating these deals anyway . . . now they simply have the best thinking of the lawyers in setting terms and parameters to guide them. But is this practice aiding non-lawyers in the practice of law? Probably not, but you can see how the analysis can get sticky when you travel down a path of off-loading lawyer jobs that are not quite so traditionally well-traveled by business people.*

*In regard to true “legal” work, lawyers may supervise non-lawyers doing such work at their behest under the provisions of Model Rule of Professional Conduct 5.3 (titled*

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*“Responsibilities Regarding Non-Lawyer Assistants”). The requirements of this supervisory role suggest that the non-lawyer should be subordinate to the lawyer; the lawyer must have the authority to direct/control the non-lawyer’s actions and the ability to enforce reasonable efforts to ensure that the non-lawyer’s conduct is “compatible” with the professional obligations of the lawyer. (Note that in most professional conduct rules, reference is made to “law firm,” and not “law department” department; rest assured that in other definitional sections of the rules, “law firm” is defined as referring to the law department if that is the environment in which the supervisory lawyer practices.)*

*Likewise, Rule 5.1, outlining the “Responsibilities of Partners, Managers and Supervisory Lawyers” in law firms (read, “departments”) mandates the responsibility of those who are senior for the conduct of those who are junior and under their charge. And Rule 5.4 requires professional independence of lawyers, including a prohibition against lawyers affiliating with non-lawyers to provide legal services. Lawyers who are aware of these rules should be able to successfully navigate these issues without running afoul of their professional obligations. It would be remiss, however, for lawyers in a legal department to design new initiatives in this area without first ensuring compliance with these provisions.]*

This Profile explores nine companies use non-lawyer personnel and technology to help perform law department functions: **3M Company; ConocoPhillips; DuPont; FMC Technologies, Inc.; McDonald’s Corporation; Monsanto Company; Southwest Airlines; Starbucks Coffee Company; and A Telecommunications Company.** The companies shared information on their practices and how they have redesigned some processes. In addition, the companies also identified aspects of their practices that they consider to be “leading practices” in this area.

Section I below summarizes key themes and program insights gathered from discussions with representatives from the companies. Section II describes the programs of each of the nine companies in more detail. Section III provides a list of resources identified by company representatives and ACC as resources that may be helpful to others as they review and evaluate ways to cost-effectively enhance the way they provide legal services to their companies.

## **I. SUMMARY OVERVIEW & THEMES FROM PROFILED COMPANIES**

The companies featured in this Profile all implemented various combinations of practices to help manage workflow and perform law department functions. Company representatives took care to explain that work performed within the law department by non-lawyers is performed under supervision and guidance of lawyers, as dictated by the rules of professional responsibility and in-house lawyers’ fiduciary duties to their clients.

All of the companies described various practices using paralegals or legal analysts to help perform law department functions. Many also described practices using technology to help leverage existing knowledge, perform tasks more efficiently, and to shift certain

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types of work to business clients, paralegals or administrative support. Many of the companies also described redesigned processes for handling litigation support efforts in-house using non-lawyer personnel and technology. Some of the company representatives spoke of non-lawyer positions that have been created to help perform certain functions that might traditionally have been performed by a lawyer, but which do not necessarily require a legal background to successfully complete.

In addition, a few of the companies described technology or strategic methods or initiatives developed internally to assist with helping to manage the way they provide efficient services to their companies. For some, these initiatives also apply to external service providers.

Below is a list of themes that emerged from discussions with company representatives about their practices. Also listed below are practices identified by company representatives as leading practices (or as helping to achieve the greatest efficiencies) for their programs.

## THEMES

- **Strategies aim to maximize internal resources and improve processes:** law departments are looking for ways to maximize the time and roles of all of the members of the legal team (lawyers, paralegals, administrative support staff). This means encouraging department members to think as corporate team players, often requiring them to leave behind traditional notions of roles. It also requires the development of systems and/or use of technology to help improve processes and expand reach.
- **Increased paralegal utilization:** companies described numerous roles that paralegals have in helping the law department to perform its functions. Most noted that paralegal numbers have increased over the past 5-10 years, and that roles have expanded to take on more and different types of tasks. Several companies described situations where time spent by lawyers in certain areas has substantially decreased, and in-house paralegal staffing and service has increased. Benefits described include reduced costs, enhanced consistency, better use of and increased job satisfaction for paralegals and lawyers.
- **Non-lawyer personnel provide litigation support:** several companies described enhanced processes for performing in-house litigation support using non-lawyer personnel. Here, non-lawyer personnel, including paralegals, may handle all aspects of support, including running dockets, selecting and establishing databases, managing and coordinating document production efforts, identifying witnesses, and more.
- **Contract-related work handled by business clients:** many companies described practices and processes to allow business clients to take the lead in preparing certain types of contracts using tools (such as templates and alternative clauses) and guidelines prepared by the law department. Client training is periodically provided to help educate clients on the tools and guidelines and to discuss contract-related issues and experiences. Some companies require the

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contracts to be forwarded to the law department for review and approval. One company described an internal audit process managed by the company's controller to review certain types of contracts to confirm consistency with guidelines.

- **Technology as a management tool:** some companies described ways they are using technology to help manage workflow and services. One company identified a "Data Tracking" system that enables law department management to track resource use and make adjustments to enhance service delivery. Another company described a matter management system using the Tracker™ matter management tracking system provided by Serengeti to perform a number of functions, including serving as a collaboration workplace and tracking matter progress. Another company described a case management system that includes a discovery data and brief bank.
- **Web-based compliance training:** some of the companies described benefits resulting from using a web-based system to deliver compliance training to business personnel throughout the company. Company representatives explained that training had traditionally been performed by lawyers through in-person sessions and that modules can now be accessed 24/7 from any global location at the convenience of the employee. Benefits described include consistency and improved communication of training goals, automated collection of metrics on the reach of training, enforcement of required training goals, employee knowledge/comprehension testing, customized reach across border, jurisdiction, and language dividers, and savings in legal department costs and training time.
- **Training:** company initiatives often include some form of training—for non-lawyers performing certain services within/for the legal department and/or for business personnel handling certain work on a daily basis. Many companies also shared that paralegals are included in in-house training programs for lawyers. In addition, several companies noted that paralegals attend outside continuing legal education sessions.
- **Non-lawyer roles in business conduct/ethics:** some companies identified non-lawyer positions that have been created to provide support in the areas of business conduct and ethics. One company described a Business Conduct Project Manager who reports to the Director of Business Conduct within the law department. Another company described an Assistant Vice President of Ethics and Compliance reporting to the Vice President of Corporate Governance & Ethics.
- **Administrative personnel roles/business service organization:** one company described a business service organization that handles all of the administrative support for the law department. Services include: coordination of facilities; outside vendor contracts; first drafts of outside counsel guidelines, policies, and retainer letters; initial review of outside counsel invoices to identify inconsistencies with guidelines; and initial screening for lawyer and legal assistant recruiting. Other companies explained that legal administrative personnel may prepare first drafts of documents such as franchise agreements or lease supplements, or may handle roles traditionally handled by paralegals.
- **Paralegal services in broad range of practice areas:** paralegals perform roles in a broad range of practice areas, including: intellectual property (patent and

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- trademark); real estate; labor and employment; commercial; corporate governance; immigration; bankruptcy; benefits; and more.
- **Paralegals have direct contact with internal clients and outside counsel:** companies emphasized that paralegals have direct contact with internal business clients. In addition, paralegals at many of the companies also directly interact with outside counsel, and may even have responsibility for selecting outside counsel (from an approved list) for a given matter, coordinating efforts, and reviewing and commenting on work product.
  - **Paralegals as primary “go-to” contacts in certain areas:** some companies explained that paralegals are designated as primary “go-to” contacts for business clients in certain areas. In some cases, paralegals may be the primary in-house person handling an area working directly with outside counsel for additional guidance.
  - **Paralegal career ladders and qualifications:** a number of companies have multiple levels of paralegals, and have developed position descriptions for the various levels. Several companies explained that they require a 4-year degree for paralegals. Some shared that they encourage or require a paralegal certificate. Some require or prefer both.
  - **Extending program reach to external service providers:** some companies have described program initiatives that go beyond their law departments and encourage outside law firms or legal research service providers to implement practices to help improve efficiencies and keep costs down. One company’s program includes encouraging outside law firms to use paralegals on company matters. Another company has developed a methodology that encourages sharing knowledge and work product among a group of outside law firms and an external legal research service provider to help leverage research results. Another company has developed litigation protocols that are forwarded to defense counsel and to carriers to send to their defense counsel to help communicate company law department expectations and procedures.

## LEADING PRACTICES

The companies were asked to identify aspects of their programs considered to be leading or best practices. Below is a list of some practices that company representatives viewed to be leading practices for their programs or helping to achieve the greatest efficiencies. Individual program summaries in Section II provide additional detail on these and other practices and program elements.

- **Working as a team:** several companies identified this as an important model for the law department. Representatives described the value of having lawyers and non-lawyers, especially paralegals, work side-by-side as a team, and including inclusion of such team members in lawyer meetings and continuing legal education programs.
- **Process for performing document productions in-house:** one company identified its redesigned process as a leading practice that has resulted in lower costs and reduced cycle times. More complete and consistent document productions are described as additional benefits. The litigation support team is

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- staffed with non-lawyer personnel including legal assistants, contract legal assistants, and a small internal litigation support group staffed with non-professional staff.
- **Modified approach for handling repetitive types of claims and cases:** listed by one company as a leading practice. For that company, the modified approaches involved designating paralegals as the primary initial contacts for one type of cases, and transferring another type of cases to a claims group staffed by non-lawyer personnel.
  - **Matter management system:** use of the Tracker™ matter management tracking system provided by Serengeti was described by one company as the “backbone” of the law department’s innovative practices using technology to enhance efficiencies.
  - **Paralegal incentive compensation program:** a new program within its law department that creates incentive compensation levels for paralegals was described as a leading practice that is a testament to the importance of paralegal contributions.
  - **Paralegal Utilization:** several companies described various aspects of how they are using paralegals as leading practices. Some companies also shared their views that experienced and skilled in-house paralegals can perform functions that might traditionally have been performed by junior level associates at some outside law firms. One company shared that its “deep and broad” use of paralegals has produced excellent results in the areas of efficiencies, job satisfaction, and cost savings.
  - **Tools and guidelines for clients:** some companies identified the various tools and guidelines developed to assist clients in taking an active role in preparing and negotiating real estate contracts as a leading practice.
  - **Empowering paralegals to take “go-to” responsibility:** identified as a practice resulting in some of the greatest efficiencies for a variety of work processes that involve commodity-type work and might be considered more routine in nature. Benefits include freeing up lawyers to focus on providing proactive, preventive and strategic legal advice.

## II. PROGRAM SUMMARIES

Following are summaries from discussions with the eight companies about their programs

### 3M Company

The Office of General Counsel “OGC” at 3M has implemented a number of strategies using non-lawyer personnel and technology to help efficiently manage in-house resources. Key among these practices is the use of a system developed by 3M called “Data Tracking,” which allows OGC management to gather data on how OGC personnel (lawyers, paralegals, and administrative support) are spending their time. Additional

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practices that have resulted in efficiencies include use of a web-based client education program and creation of a litigation support function.

Tom Boardman, Staff Vice President, Deputy General Counsel, and Assistant Secretary, explains “over the past few years, our law department has increased the number of paralegals, broadened responsibilities for paralegals, increased contract personnel utilization, and shifted some types of work to business personnel. These actions were taken primarily as a result of information gathered through Data Tracking, and many involve the use of non-lawyers to help improve overall efficiencies.”

## DATA TRACKING

The law department’s data tracking system was developed internally and is activated for defined periods of time (e.g., 1-4 weeks) periodically throughout the year. When the system is activated, lawyers, paralegals, and administrative personnel within the department keep time sheets using codes to identify business units, work categories (such as client counseling, litigation, transactions, office administration), and estimated legal risk and business value for the tasks performed. Written guidance is provided on definitions for risk and value.

Boardman explains, “the OGC management has made a commitment that data tracking information will not be used as a performance management tool. Instead, the data is solely used for the purpose of trying to become more efficient and productive.” To help emphasize this commitment, access to the raw data is limited to a senior lawyer who is not part of management. Consolidated reports are distributed to the entire OGC department and show overall lawyer, paralegal, and support staff utilization by category. If OGC management identifies areas that merit additional analysis, task teams may be formed to evaluate existing practices and propose solutions. Individual employees can also review data about their workload to identify areas for improved efficiencies.

Some of the process improvement solutions implemented as a result of information gathered through data tracking include: shifting copy approval responsibilities to paralegals and emphasizing the role of business personnel in this area; creating on-line tools and information that allow business personnel to handle certain needs; and web-based client education (described below).

## ELECTRONIC CLIENT EDUCATION

The law department has shifted its awareness-level client education practices from live training sessions to web-based training. This shift to web-based training is a result of information gathered through Data Tracking on the amount of time spent on client training initiatives. Boardman explains that the transition to electronic client education has “allowed training to reach deeper into the organization and has freed up law department personnel time for more strategic work and higher level training. Prior to the shift, the law department may have been able to reach around 1000 employees with

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classroom training and live 3M television broadcast sessions. Now, clients located around the globe can access training materials 24/7.”

### LITIGATION SUPPORT FUNCTION

Another important initiative implemented by the law department is the creation of a litigation support function comprised of paralegals and other non-lawyer personnel. The litigation support team is responsible for handling all document-related work, including coding and scanning documents into a web-enabled litigation database. The team provides expertise in the area of litigation support technology including electronic discovery processing.

### PARALEGAL POSITIONS, QUALIFICATIONS, AND TRAINING

The 3M law department includes 4 levels of job grades for paralegals. Boardman explains that variations in job grades are a function of experience and responsibility, and that job grades have expanded as the paralegal roles and responsibilities have grown. Paralegals within the 3M law department are required to have a paralegal certificate plus a 4-year college degree (or be working towards those qualifications).

“Paralegals at 3M are an increasingly important part of our legal service model and as a result are included in nearly all of the law department training provided for lawyers,” says Boardman. In addition, paralegals may attend outside courses and conferences. Paralegals and support personnel (other than administrative assistants) are also included in the law department’s legal conferences.

### LEADING PRACTICES

Asked which elements of the 3M law department’s practices he would consider to be leading practices, Boardman explains “Our electronic awareness training is based on a commercially available product so I would hesitate to characterize it as ‘leading’. However, our more comprehensive client education, of which awareness training is only one part, I would characterize as a leading practice in terms of its breath and depth. In addition, our use of Data Tracking as a strategic tool to direct specific productivity and efficiency efforts is something that I have not seen very often in other legal departments.”

### **ConocoPhillips**

The ConocoPhillips law department has implemented a number of initiatives using technology and non-lawyer personnel to help provide cost-effective in-house legal services. Among these initiatives are: utilizing web-based compliance training to deliver compliance training across the globe to company personnel worldwide; leveraging legal assistants in the areas of asbestos and marketing litigation; developing an internal litigation support process and team to handle all document discovery using inside resources; and creating a business services organization to centralize administrative support, including service of process, matter management system, budgeting and

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processing of outside legal bills, outside vendor contracts, and outside counsel retention guidelines.

Ron Denton, Manager Business Services-Law, explains “we took an internal look at costs and lawyer time in a number of areas. What we found was that there were a number of areas where we could utilize technology and leverage our resources better to allow the attorneys to focus on the practice of law and provide legal assistants and professional support staff to leverage the attorneys in our law department. These initiatives have resulted in savings in attorney time, improved services, and overall lower internal costs. In addition, they have benefited the business by making more resources available around the world and by improving consistency and cycle time in methods and approaches.”

### WEB-BASED COMPLIANCE TRAINING

Until around 3 years ago, the company’s global compliance training efforts were led by attorneys, and mainly consisted of in-person training sessions. That approach meant that attorneys spent time traveling to training locations, and developing and delivering numerous training sessions at multiple locations. Web-based compliance training now allows any company employee anywhere in the world to access the training modules at any time. Consistency, convenience, and cost-savings are all significant process improvement benefits described by Denton.

### LEVERAGING LEGAL ASSISTANT SUPPORT IN ASBESTOS AND MARKETING CASES

Over the last few years, the law department performed a number of internal evaluations to determine opportunities to improve efficiencies. Two key types of cases were identified as being repetitive and low risk in nature, and the law department implemented an approach that involved increased legal assistant utilization.

- **Asbestos cases:** prior to the redesigned process for these cases, several attorneys were involved in managing and resolving them. With the new process, 4 legal assistants are now on point, and manage and coordinate these cases under the supervision of the equivalent of 1.5 attorneys. Legal assistant roles include coordinating work with outside counsel, drafting interrogatories and plaintiff evaluations, and performing document productions. In addition, legal assistants have important roles in properly evaluating the cases in preparation for mediation and settlement proceedings.
- **Marketing/slip & fall cases:** prior to the redesigned process for these cases, 2 attorneys plus another attorney spending part-time handled these cases. The redesigned process transferred responsibility for these cases to the claims group. Currently, staffing for these cases includes 3 legal assistants plus another spending half-time, and 1 attorney.

## LITIGATION SUPPORT TEAM

The law department has created a litigation support process and team to handle all document discovery using inside resources and storing the resulting databases with the company. The team is staffed with non-lawyer personnel utilizing legal assistants, contract legal assistants, and a small internal litigation support group staffed with non-professional staff. Outside litigation support vendors are coordinated through a central litigation support coordinator. The ConocoPhillips legal assistants manage the overall document discovery process under the direction of the responsible attorney based on a detailed plan developed at the onset of every significant discovery effort. Denton explains that centralizing litigation support and performing much of the document gathering and review in-house has resulted in significantly lower costs and reduced cycle times while developing more complete and consistent document productions.

## BUSINESS SERVICES ORGANIZATION

About 18 months ago, the law department centralized its administrative support within a then-newly created business services organization. All personnel within the law department (other than lawyers and legal assistants) report to Denton within this organization. An organizational chart for the business services organization together with information on services performed by the organization may be accessed via link in the Resource List in Section III of this Profile.

Key benefits flowing from centralizing administrative services in this manner include reduced lawyer time spent on handling “routine-type” issues. More specifically, the business services organization handles the following: departmental budgeting; process improvement; coordination of IT services; all legal department files and records; coordination of facilities; outside vendor contracts; first drafts of outside counsel guidelines, policies, and retainer letters; initial review of outside counsel invoices to identify inconsistencies with guidelines; and initial screening for lawyer and legal assistant recruiting. In addition, the law department has centralized service-of-process receipt so that all matters go to Denton’s group for recommended assignment (reviewed and approved by the Deputy General Counsel) to the department’s in-house lawyers.

## LEGAL ASSISTANT QUALIFICATIONS

The law department includes around 120 attorneys worldwide, and around 50 legal assistants located primarily within the United States. Legal assistants are required to have a 4-year college degree. In addition, if the degree is in a field of study other than legal studies or paralegal studies, the legal assistants are also required to have a paralegal certificate.

## LEADING PRACTICES

Asked which elements of the law department’s practices he would consider to be leading practices, Denton explains that he believes that the redesigned processes for handling

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document productions totally in-house, and the modified approach to handling asbestos and marketing/slip and fall cases are on the front edge from an efficiency and cost effectiveness perspective while maximizing the overall results. In addition, he shares his view that the way the law department has structured the business services organization is a leading edge practice that focuses administrative support services in one group that can handle department-wide issues proactively.

### **DuPont**

The DuPont law department has developed a model for providing corporate legal services called the DuPont Legal Model. An important component of the legal model is the paralegal utilization program. The program describes ways to improve overall services by increasing paralegal utilization—both within the corporate law department and at outside law firms providing services to the law department.

Key benefits of the paralegal utilization program include helping to improve work quality, control costs, and free attorneys to focus more on strategy. Julie Mazza, Corporate Counsel for DuPont, explains “our law department is constantly looking for ways to leverage our resources and match the best resources for the task at hand. Paralegal utilization has been a big part of this, and has resulted in real cost savings.” (For additional information on DuPont’s paralegal utilization program, [see http://dupontlegalmodel.com/files/ourinitiatives\\_3.asp](http://dupontlegalmodel.com/files/ourinitiatives_3.asp)).

Marybeth Davies, DuPont’s Paralegal Manager, is proud of the paralegal initiatives at DuPont and of the company’s paralegal team. “Paralegals play key roles in many areas of the law department, and often function at the equivalent level of a first-to-third year associate at an outside law firm,” says Davies. “Our law department is staffed very lean, and utilizing our internal resources efficiently plus managing lower cost temporary lawyer and paralegal staffing from an outside service provider allow us to provide high quality cost-effective service,” says Davies.

The DuPont law department includes 127 lawyers and 60 paralegals. In the past 10 years, the number of paralegals within the law department has more than doubled. The average years of experience for paralegals at DuPont is 14.5 years, and several paralegals within the law department have more than 20 years of experience. Of the 60 paralegals in the DuPont law department, 22 work within the litigation area, and 38 work in over 12 other areas. Paralegals are the primary “go-to” individuals in certain substantive areas, and perform important and substantial work in many other areas. Some of the key roles played by paralegals within the DuPont law department are highlighted below.

### **PARALEGAL POSITION STRUCTURE AND QUALIFICATIONS**

The DuPont law department has established specific requirements for paralegal qualifications. At a minimum, all paralegals must have a 4-year college degree. In addition, there is a strong preference for paralegals to have a paralegal certificate from an ABA-approved program. Davies explains “the minimum requirements help to reinforce

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that our paralegals are truly professionals.” Paralegals are salaried employees and do not receive overtime pay.

There are three levels of paralegal positions within the DuPont law department, and two sub-levels within each position level. The three position levels are: Paralegal (entry level); Senior Paralegal (mid-level); and Corporate Paralegal (career level). The law department has developed position descriptions identifying position responsibilities and targeted development dimensions for each level. Paralegals at all three levels are responsible for interacting directly with clients and/or outside counsel or service providers. Paralegals at the highest level are expected to have extensive knowledge in a specific area or discipline and may be responsible for acting as DuPont’s primary representative with external contacts and entities.

### PARALEGALS AS “GO-TO” CONTACTS

Paralegals are described as the primary contacts for three areas: Bankruptcy, Immigration, and Benefits. All of the paralegals providing services in these areas are described as “very experienced,” and knowledgeable about when to seek guidance from lawyers.

- **Bankruptcy:** the “go-to” paralegal for bankruptcy is the sole in-house law department contact for these matters. This paralegal reports directly to the Vice President and Assistant General Counsel for Litigation, and works directly with outside counsel on matters requiring guidance and input from a lawyers.
- **Immigration:** the “go-to” paralegal for immigration matters is also the only in-house law department member on point for these issues. This paralegal reports directly to an Associate General Counsel and works directly with outside counsel for guidance on immigration matters.
- **Benefits Area:** as with the above two paralegals, the “go-to” paralegal for benefits is also on point for all benefits-related matters for the company, and works directly with outside counsel on any matters requiring input from a lawyer.

### PARALEGAL ROLES IN PATENT AND TRADEMARK PRACTICE AREAS

The law department has a total of 7 paralegals working on patent and trademark issues. The trademark team includes 4 paralegals and 3 lawyers. Paralegals on the trademark team play a key role in helping to manage and coordinate the company’s numerous trademark estates. Similarly, there are 3 full time paralegals working on all patent matters, including performing a substantial amount of work in the agreement and licensing area.

### LITIGATION SUPPORT

Davies describes the level of work performed by paralegals in the litigation area as equivalent to junior associate level work in outside law firms. Here, paralegals run litigation dockets, manage document collection efforts, identify witnesses, select database set-up, and coordinate numerous aspects of the litigation process. Paralegals work very

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closely with outside lawyers on discovery matters, and play an active role in coordinating that process.

Another group of non-lawyer personnel supporting the litigation efforts is the manager of the litigation group's discovery team. This individual is an information technology professional, and works closely with paralegals on the team and with in-house and outside counsel to develop the appropriate approaches for addressing discovery requests.

## SOURCING AND PERFORMANCE COATINGS BUSINESS SUPPORT

Paralegals supporting these groups work directly with company business personnel to develop agreements for their business processes. In the sourcing area, buyers provide business information to in-house paralegals, who then develop appropriate agreements using standard forms and clauses. Working together, paralegals and buyers work on agreement negotiations and involve company lawyers for guidance as needed. In the performance coatings area, paralegals play a key role in helping to prepare distribution agreements.

## PARALEGAL MANAGER

Davies is responsible for the law department's paralegal program, and has a dotted line reporting relationship with the 60 paralegals in the group. Davies manages paralegal hiring and firing, and career development initiatives for all paralegals in the group. She is also involved in review and promotional decisions-- although she does not formally review every paralegal in the group. She also helps to provide guidance on career progression within the department. "A number of our paralegals have moved from litigation roles to transactional roles, and this is an indicator of the versatility and transferability of skills and experience," says Davies.

In addition to her role as paralegal manager for DuPont's in-house paralegals, Davies is involved in initiatives to improve paralegal utilization at outside law firms used by the company. "The idea is to help the firms understand the broad range of services that paralegals can provide. Cost savings is part of this. We know the level of work that paralegals can perform, and we don't want to pay for a junior lawyer to do this work if an experienced paralegal can do the same (or better) job," explains Davies. Another blended role that Davies plays is helping to manage the temporary paralegals from an outsourcing partner who are performing DuPont legal work.

## LEADING PRACTICES

Asked which components of DuPont's program they would consider to be leading practices, Mazza and Davies share that the overall program and approach at DuPont involves a deep and broad use of paralegals, and that there is great value in putting good people in good positions. Management has seen the value in utilizing paralegals to their abilities, and this has produced excellent results in terms of work efficiencies, job

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satisfaction, and cost savings. “Our law department is staffed lean, and paralegals are key players in helping the law department to perform its functions.”

### **FMC Technologies, Inc.**

FMC Technologies, Inc.’s legal team has developed a strategic program called “1° Law™” to enhance efficiencies, maximize the use of technology, eliminate barriers, and encourage teamwork to help achieve the law department’s overall goals of providing efficient and effective high-quality legal support. Key program components include: outsourcing legal research, training and empowering contract managers to do initial contract drafting and reviews, leveraging third party service providers, and encouraging work product sharing through forms, standardization and shared databases. The program has been in place for around 18 months.

Jeff Carr, the company’s Vice President, General Counsel & Secretary, shares “a major challenge facing law departments today is how to do more with less, and Sarbanes-Oxley has increased demands on many law departments. Through our 1° Law™ program, we are helping to change the way people work, think, and use tools. The program is linked with our compensation structure—both internally and in fee arrangements with outside service providers—to help encourage its implementation.”

To help align goals and incentives, the company’s law department has also developed a system called ACES™ (Alliance Counsel Engagement System- patent pending) that evaluates performance in five core metric areas. Resources describing the ACES™ system may be accessed via link in Section III of this Profile.

### USE OF TECHNOLOGY

The company’s legal team uses technology to maximize efficiencies in providing legal services. Practices leveraging the use of technology include the team’s matter management systems, monthly training via videoconference, web-based compliance training, and forms and guidelines databases.

- **Matter Management:** Carr describes the law department’s use of the Tracker™ matter management tracking system provided by Serengeti as the “backbone” of the department’s innovative practices using technology to enhance efficiencies. Lawyers (both inside and out) are required to input and update matters in the system. Carr has access to all matters and can track legal matters by pushing a button.

The other lawyers have access to their matters, matters affecting the business unit they advise, and other matters within their area of legal specialty. This eliminates work (and time) that might traditionally have been spent separately reporting on matters to management. In addition, Carr describes the system as functioning as a “collaboration work place” and as a repository for matter work product. An additional feature is an “after action report,” which is input into the matter

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management system and evaluates performance and process improvement opportunities. The after action process also incorporates the lessons learned to both avoid future litigation and exposure and avoid the cost and inefficiency of answering the same questions twice.

- **Monthly Training:** Videoconferencing technology enables the legal team to reach out and deliver training to business clients around the world. The law department's "1<sup>o</sup> Law School" program includes a monthly one-hour seminar delivered by a lawyer from the company's legal team. These lawyers focus their training in their areas of expertise and are also responsible for overseeing related materials on the company's intranet site. The videoconference sessions are held during the last Wednesday of each month, and are also videotaped so that company employees can view the seminar "live" via videoconference, or can view a recorded version posted on the company's intranet site.
- **Web-based Compliance Training:** Carr shares that the legal team is enhancing its compliance training programs to implement web-based compliance training. The overall program will include around 23 different training modules. Company employees worldwide will be required to take various compliance-related courses and periodically certify that they have read and will follow the company's code of ethics. "The web has enabled us to reach out efficiently and effectively to our customers," explains Carr. "It allows us to use technology to help deliver preventive law training to a broad population of individuals in a meaningful and consistent way. While we still do in-person training, the web minimizes the inherent limitation of 'happenstand training' – training that occurs when the employee happens to be standing in the room with the trainer."

## CONTRACTS HANDLED BY CLIENTS USING WRITTEN GUIDELINES

Another practice that leverages technology and maximizes law department efficiencies is a consistent and broadly implemented contract review process. In the mid-'90s, the company developed contract guidelines for one of its major business groups. The guidelines describe the five or six key issues that are most important to the company from a legal standpoint. They provide fallback positions and a review process where requests to deviate must be approved by upper management.

"Contract review is time intensive and with a decreased lawyer headcount, the ability to perform ground-up contract review was limited. Such review, while often performed by lawyers, can be done by trained personnel with access to legal expertise when needed," explains Carr.

As a result, around two years ago, the guidelines were revised and implemented on a company-wide basis. Business personnel with contract review and management responsibilities have access to the guidelines through the legal team's intranet. The review process has been distributed to business personnel together with instructions on how to proceed and when to seek additional guidance from the law department. Business

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unit controllers review executed contracts quarterly, and the internal audit procedures include a similar review to help ensure consistent application of the company's guidelines.

The end result is that business personnel are empowered to manage the contract process provided that contracts meet the criteria described in the guidelines. In addition, business personnel have a consistent set of resources that help to explain contract issues that might arise.

## USE OF PARALEGALS AND ADMINISTRATIVE AND LEGAL ASSISTANTS

Carr shares that assigning work to the best possible person furthers the important objective of managing the team's workload. Just as the contract managers and controllers review contracts as described above, paralegals often do preliminary document reviews prior to forwarding documents to lawyers for approval. In addition, a paralegal is also the point person for subsidiary and affiliate management and for administering many aspects of the corporate secretary function, including interfacing with CT Corp. In the intellectual property area, key roles are performed by administrative assistants who handle much of the trademark and patent maintenance work, and by a patent agent, who is also a non-lawyer.

## OUTSOURCING RESEARCH

Another important practice that shifts certain types of work from in-house lawyers and paralegals to outside service providers is outsourcing legal research. Carr explains that research services may range from a memo to a brief, and describes this program component as consisting of a "network of researchers, including LRC and five law firms." All of these service providers are on the ACES program, and are encouraged to share work product through an additional bonus program known as the ACES<sup>2</sup> model.

How does the ACES<sup>2</sup> model work? To help encourage networking and sharing, the payment structure is designed to reward all participants in the program with some percentage of the overall savings over a portfolio of litigation. While each firm handles individual cases under an individual ACES budget, they are also encouraged to share knowledge, research and past work product to garner further savings. If the overall team results in savings below an annual budget for the entire portfolio of cases, all the firms participating in the ACES<sup>2</sup> share 60% of those savings.

## LEADING PRACTICES

Asked which elements of the company's legal team practices he would consider to be leading practices, Carr shares that he believes the holistic approach to matter-management through Serengeti matter management and the ACES fee structure have helped to achieve the greatest efficiencies.

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### McDonald's Corporation

The law department for McDonald's Corporation has developed strategies utilizing non-lawyer personnel to perform high-level front-line functions in two key practice areas: real estate, and customer claims and litigation. Sheila Fahey, a paralegal-litigation specialist for the customer action team, explains that the law department's paralegals recently hosted a paralegal panel at the law department's Global Legal Conference. The panel offered insights on roles and utilization strategies for paralegals at a number of companies. Fahey shares that the panel helped to confirm that many of the paralegal utilization practices implemented at McDonald's appear to be on the leading edge.

Marjorie Mroczek, a paralegal-contracts specialist for the law department's real estate group, explains that the philosophy within the law department is "to use people to their maximum potential, and this means matching skill sets and experience with work. Paralegal and administrative utilization within the real estate group has helped to dramatically reduce attorney time, and associated processes have resulted in earlier involvement of the legal department and happier business people: a win-win for all."

Within the law department, there are five non-lawyer position levels: Legal Receptionist/Clerk; Legal Administrative Assistant; Legal Administrative Coordinator; Paralegal/Legal Assistant; Legal Specialist (includes Contracts Specialists and Litigation Specialists). Individuals at the Paralegal and Legal Specialist levels report to lawyers within their practice groups, and share administrative support with the lawyers on their teams.

#### REAL ESTATE PRACTICES MAXIMIZING EFFICIENCIES USING NON-LAWYERS

The law department's real estate group includes 17 lawyers, 10 contracts specialists, 25 paralegals, and 10 document coordinators, as well as administrative support. Around 5 years ago, the law department developed a number of strategies using technology, client training, and non-lawyer law department personnel, to improve processes for supporting the company's real estate function. Key objectives in enhancing these processes were to encourage clients to involve the law department early in the deals, reduce cycle time, and enhance efficiencies. An additional result was reduced costs, explains Mroczek.

In the past (prior to 1999), business clients were given a set of form contracts, developed initial real estate documentation, negotiated transactions to a certain point, and then involved legal. Mroczek explains that this process often resulted in a sentiment that legal was raising issues "late in discussions," and frustrations among clients and lawyers.

The new process shifts the initial document development to the contracts specialists in the law department. Business personnel contact the relevant contract specialist assigned to their business region and provide relevant business information for the specialist to incorporate into necessary documents. Once the documents are prepared by the specialist

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(using forms and alternative clauses developed and approved by lawyers within the law department), the specialist and business client together negotiate the contracts. Mroczek explains that her work is under the supervision of lawyers, and that “the lawyers in the law department approve all deals before they go to signature.”

Paralegals and document coordinators perform additional services as part of the law department’s real estate team. Paralegals perform title and survey reviews, and are responsible for handling matters to clear title and for coordinating the closing for each deal. Document coordinators (the highest administrative support level) often prepare lease supplements and first drafts of franchise agreements using forms developed by lawyers on the team. Paralegals often review franchise agreements prepared by document coordinators as part of the overall process.

Asked about training for clients and for contracts specialists, Mroczek explains that 1-2 times per year, the contract specialists and real estate lawyers will train the real estate personnel and provide an overview on documents and issues. In addition, in-house lawyers on the real estate team train the contract specialists 1-2 times each year on forms, alternative clauses, and strategies.

#### CUSTOMER ACTION TEAM: PARALEGAL UTILIZATION & PRACTICES

The Customer Action Team is part of the law department’s litigation practice group, and focuses on claims and litigation brought against McDonald’s by customers. The team includes 3 lawyers, 5 paralegals (called Litigation Managers or Specialists), and 3 administrative personnel. Each paralegal is on point for supporting a number of business regions so that all of the 27 regions are assigned support.

How does the claims process work? As claims are made, the litigation specialist will coordinate with external defense counsel (chosen from an approved list) and internal business operations to put together the relevant claims or litigation team that will operate under the supervision of an attorney. The law department has developed litigation protocols that are forwarded to defense counsel and or to carriers to send to their defense counsel to help communicate company law department expectations and procedures. Outside counsel must forward pleadings, motions, answers and responses to discovery documents to the Litigation Specialists for their initial review and comment. Once the document meets the approval of the Litigation Specialist it is forwarded to an attorney on the team for final review and approval. Lawyers on the team will join the Litigation Specialists in discussions with outside counsel for guidance on complex issues.

#### LEADING PRACTICES

Asked which elements of their law department’s practices utilizing paralegals Fahey and Mroczek consider to be leading, they explain that they believe the interactions among lawyers and paralegals as colleagues is an emerging and important model. “The degree of cooperation and relationship among lawyers and paralegals, and the manner in which

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we partner to provide overall service to the company can be considered a leading practice,” shares Fahey.

### **Monsanto Company**

The law department at Monsanto is implementing a number of strategies and programs using non-lawyers to help perform law department functions. Paralegal utilization in the areas of corporate governance, intellectual property, trademark, and litigation is a key strategy that helps the company’s law department efficiently and effectively provide services. Paralegals in each practice area report to the lead lawyer for that practice area and share administrative support with the lawyers on their teams.

Additional practices within the law department include shifting certain types of work to non-lawyer managers within the department. More specifically, the law department has recently created a position titled Business Conduct Project Manager that is responsible for supporting the Director of Business Conduct in managing the company’s business conduct program, including the employee hotline, website materials, and new employee training and orientation.

### **PARALEGAL RESPONSIBILITIES IN CORPORATE GOVERNANCE**

The law department’s corporate governance team includes three paralegals. One paralegal is responsible for handling much of the Board-related work, including preparing Board materials and being on-point for communications and interactions with the company’s Board of Directors. Another paralegal on this team is responsible for coordinating the company’s Section 16 reporting as well as serving as a direct interface with the company’s stock transfer agent and handles issues relating to proxy solicitations logistics, and dividend-related matters. At the suggestion of a paralegal on this team, the company’s corporate governance team has recently purchased software that will allow the team to connect the company’s corporate governance and information technology groups, and further leverage technology to perform their roles supporting governance initiatives more efficiently and effectively.

### **PARALEGAL ROLES IN INTELLECTUAL PROPERTY GROUP**

Five paralegals are assigned to this group, and they work closely with the in-house lawyers on their team. In addition to the docketing function coordinated by two of the group’s paralegals, routine contracts as well as more complex documents (including licensing agreements) are now prepared by one of the group’s paralegals. This is an example of an area where work has been shifted from lawyers to a paralegal within the law department, with guidance and training from lawyers in the group. Tracy Tretiak, Operations Lead for the law department, explains that the fourth paralegal in the group is responsible for coordinating matters relating to renewals and maintenance fees, and for supporting the lead IP lawyer in the group on a variety of additional matters, including helping to manage the group’s budget.

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The paralegal handling trademark issues is described as a first point of contact for many internal business clients. In addition, this paralegal's roles include working directly with outside counsel on trademark issues, preparing and delivering presentations to clients, serving on a company-wide committee responsible for trademark internet issues and filing U.S. and electronic trademark applications.

#### PARALEGAL ROLES IN LITIGATION SUPPORT

Paralegals within the litigation group have direct responsibility for managing the discovery process. In this role, paralegals have direct interactions with outside counsel regarding the scope of discovery, and serve as the project managers for the entire discovery process. Paralegals also coordinate with business personnel within the company and coordinate the overall document review process. "All of these tasks used to be performed by lawyers. The paralegals within the litigation group now perform these roles under the supervision of lawyers. Paralegals have direct responsibility for managing the overall process, and lawyers have more time to focus on strategic issues" explains Tretiak.

#### COMMERCIAL CONTRACTS DATABASE ALLOWS BUSINESS CLIENTS TO PREPARE CONTRACTS

Lawyers and paralegals within the law department have developed a database of standard agreements to allow business personnel to prepare a variety of commercial contracts. Using the database of approved forms, business personnel can prepare agreements such as confidentiality, service, maintenance, consulting, lease, and sales agreements. "This is an example of a practice that leverages technology and shifts to business personnel work that might have been traditionally performed by the law department," says Tretiak.

#### STEWARDSHIP

The company's stewardship program is co-chaired by the legal and the regulatory departments. The Executive Director of the Stewardship program is a non-lawyer with a science background and is responsible for setting direction and ensuring implementation of the company's stewardship program. This includes coordinating all company-wide stewardship activities and ensuring accountability for stewardship of products.

#### BUSINESS CONDUCT PROJECT MANAGER

As described above, the Monsanto law department has recently created a new position titled Business Conduct Project Manager. This position is held by a non-lawyer and is responsible for supporting the Director of Business Conduct in managing the company's business conduct program. Roles include monitoring and assigning hotline calls, coordinating business conduct website materials, providing new employee training on business conduct, and managing the numerous program components in this area.

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## LEADING PRACTICES

Asked which elements of Monsanto's law department programs she would consider to be leading in this area, Tretiak describes a new program within the law department that creates incentive compensation levels for paralegals. Tretiak explains that this development is a true testament to the important contribution that paralegals make. She also shares that the process of enhancing paralegal utilization has evolved over time, and that these behaviors are consistent with company-wide patterns of behavior that encourage personnel to "get out of their comfort zone and to grow and develop."

### Southwest Airlines

The law department at Southwest includes 15 lawyers and 9 individuals performing paralegal and legal administrative roles. Cynthia Buhr, Chief Litigation Counsel, and Pam Smith, Technology Counsel, describe the company as very "employee-centric." They explain that this overall philosophy and culture is evident in the legal department, and that with this positive culture comes a dynamic environment that strives to empower employees and to encourage them to take initiative and seek out additional responsibilities. For this reason, many of the non-lawyers within the law department often take on roles that go beyond their technical job title. Legal administrative assistants work hand-in-hand with paralegals and lawyers to help achieve positive results for the law department.

## USE OF NON-LAWYER PERSONNEL IN LABOR AND LITIGATION AREA

Buhr explains that this practice area relies very heavily on its non-lawyer staff. Among the key roles played by staff and paralegals in this area are: assisting in interviewing witnesses, handling case development (gathering documents, preparing files, developing witness lists), preparing for arbitration proceedings, and preparing first drafts of documents and correspondence.

In addition, Buhr shares that the law department interfaces with business staff in the employee resource centers for each of the company's main customer work groups (e.g., business units). Lawyers for the company meet quarterly with employee resource personnel in these groups and proactively advise them of new developments in the law and discuss issues that may arise. "Managers, front line employees, and leaders do a great job of helping to prevent many issues before they become legal issues," says Buhr. "Cultivating this relationship and having this 'partnership' help foster an environment where clients feel comfortable coming to the law department with anything. This proactive up-front work helps us to more efficiently use our resources," explains Buhr.

## NON-LAWYER ROLES IN CONTRACT NEGOTIATIONS

Smith describes non-lawyer staff assigned to the transactional area as "very involved in helping to keep everything moving in a practice area that is very document intensive."

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Paralegal roles include helping to process contracts, and proofreading documents to help ensure they are ready for transmittal and finalization.

### SUBPOENA PROCESSING

Within the law department, a team lead paralegal is described as the first line for handling any questions that may arise on subpoenas. Although Buhr and Smith explain that this is not a formal position assignment, initiative combined with expertise and experience have resulted in this process that has evolved over time.

### CASE MANAGEMENT SYSTEM

Another process that has helped to use legal resources more efficiently and is designed to avoid “reinventing the wheel” is the law department’s case management system. The system includes a discovery bank and a brief bank. Paralegals oversee and manage this system for the law department. The system was purchased “off-the-shelf” and the law department did some customization.

### PARALEGAL QUALIFICATIONS

Asked whether the law department has any guidelines on paralegal qualifications, Buhr and Smith explain that it does not. “We hire good people and train on skills. We see this as a more flexible approach than setting firm requirements on a bachelor’s degree or paralegal certificate. The practice of law is hopefully common sense. Finding someone with this and with a good attitude is so much more important than requiring a threshold certificate or degree,” explains Smith.

### LEADING PRACTICES

Asked which elements of the law department’s practices they would consider to be leading practices, Smith and Buhr explain that “there is a real sense of service and mission-task accomplishment. Our non-lawyers work with lawyers as a team and are important to the overall effort.”

### **Starbucks Coffee Company**

The law department at Starbucks Coffee Company has implemented a number of strategies utilizing non-lawyer personnel to help perform law department functions. These strategies include optimizing paralegal utilization, and developing tools and guidelines for clients to allow business clients to take on document preparation and negotiations. In addition, the law department’s records management team staffed by non-lawyers helps to coordinate and provide guidance on document and records management to other company departments. Paul Mutty, vice president & assistant general counsel-international for Starbucks, explains that these practices were developed primarily to address the company’s rapid growth and need for legal services, and the law department’s

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need to “live within its budget.” He describes these practices as “efficient and cost-effective, and as involving lawyers at the appropriate time.”

## PARALEGAL NUMBERS AND QUALIFICATIONS

The company’s law department includes 30 lawyers and 22 paralegals. There are two levels of paralegals within the law department. Paralegals generally report to lawyers within their substantive practice area, and receive administrative support from shared support personnel on their legal teams.

## PARALEGAL AND CLIENT ROLES IN REAL ESTATE LEASING WORK

The company’s domestic business involves a large volume of leasing work. For 2004, Mutty explains that in excess of 900 leases and lease renewals may require drafting, review and approval. To help make the process more efficient and consistent, a number of practices have been implemented, including: (1) developing a standard set of tools and guidelines for real estate business personnel so that they can prepare and negotiate real estate documents using clear and consistent company positions; and (2) using paralegals to coordinate legal support for the leasing process. Tools include forms for letters of intent, lease and renewal forms, and guidelines with explanations of legal and business positions.

Of the law department’s 22 paralegals, 4 are assigned full-time to the real estate department and a significant portion of their work is focused on coordinating the leasing process. In this role, the real estate paralegals are “on the front lines,” and work directly with clients and with outside counsel.

Mutty shares that a comprehensive lease process was developed around three years ago and is “very well tailored to the way the company does business.” He explains that being able to standardize real estate forms, guidelines, and positions has been very beneficial and important. In addition to benefiting in-house business personnel and the law department, the real estate tools and guidelines have also been beneficial to outside counsel working on real estate matters.

## PARALEGAL ROLE IN TRADEMARK REGISTRATION AND PROSECUTION

In-house paralegals also perform important coordinating functions in the areas of trademark registration and prosecution. Key roles and services include coordinating trademark infringement cases, managing registrations in over 140 countries and across many time zones, and helping to ensure that these registrations are complete and up to date. Six paralegals are assigned to these issues on a full-time basis, and Mutty describes their roles and work as a leading practice. “Starbucks has one of the most recognizable brands in the world. As a company, we need to be vigilant in protecting our brand, and our paralegals play a key role in making this happen,” explains Mutty.

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## PARALEGAL ROLE IN LABOR, EMPLOYMENT & LITIGATION PRACTICE AREA

Again, paralegals are described as having key “front line” roles in this practice area. Paralegals perform fact-finding and do significant amounts of background work to help reconstruct the facts and circumstances of commercial and consumer litigation and employment cases. Paralegals also manage the documents for these cases, and most in this role have a number of years of experience in outside law firms.

## PARALEGAL ROLE IN COMMERCIAL PRACTICE AREAS

At Starbucks, paralegals in the commercial practice groups may handle first drafts and initial negotiations of a variety of commercial contract matters generally described as routine (such as confidentiality, sponsorship, and limited logo usage agreements). In addition, Mutty explains that paralegals within the commercial practice teams also play an important role on larger transactions. Here, the role may focus on helping to coordinate documents and due diligence reviews, manage timelines, and keeping the team on point.

## RECORDS MANAGEMENT TEAM

The law department's records management team manages the department's records and also provides consultation to other departments within the company on records management matters. This team is staffed by non-lawyers.

## CLIENT TOOLS IN PROCUREMENT AREA ENABLE CLIENTS TO DRAFT AND NEGOTIATE CONTRACTS

Working with the procurement team, the Starbucks law department has developed a number of standard forms and tools to enable the buyers on the company's procurement team to draft and negotiate contracts in this area. Mutty explains that this is an example of work that was traditionally performed by lawyers, but that has been taken on by clients using tools and applying judgment on the need to coordinate with in-house lawyers. This process redesign is described as being effective for both the law department and the company as a whole, and utilizing skills, expertise, and experience effectively.

## LEADING PRACTICES

Asked which elements of the law department's practices he would consider to be leading practices in this area, Mutty explains his view that the department's utilization of paralegals in the trademark and real estate areas, and the development of tools and guidelines in the real estate area can be considered leading practices. “Our real estate group probably does as much or more commercial real estate leasing work from the tenant's perspective as any other company. The tools and guidelines that have been developed, and the processes that have been put in place are part of a very sophisticated

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practice that is efficient and cost effective and that involves lawyers at the appropriate time,” he explains.

### **A Telecommunications Company**

This company’s law department implements a variety of strategies using non-lawyers and technology to help perform law department functions and maximize efficiencies. The law department includes 90 lawyers and 36 legal analysts, with the number of legal analysts having more than tripled during the past ten years. At the company, legal analyst positions belong to a “three-rung job family” (e.g., three levels of positions), and legal analysts receive administrative support from administrative assistants within their practice areas.

“Within our law department, we all function as a team of professionals. Teamwork and professionalism are fundamental goals, and our lawyers and legal analysts work side-by-side in an inclusive environment,” explains the Vice President of the Labor & Employment Law section of the law department. She also observed that legal analysts at the company are a highly talented group of individuals that often serve as a talent pool for other positions within the company.

The company has also created the position of Assistant Vice President – Ethics & Compliance that is currently held by a non-lawyer. The Assistant Vice President – Ethics & Compliance has a staff and reports to the company’s Vice President, Corporate Governance and Ethics & Corporate Secretary within the law department. The Assistant Vice President – Ethics & Compliance facilitates interactions with the Board of Directors and business unit leaders on issues relating to ethical conduct.

### **LEGAL ANALYST & CLIENT ROLES IN CONTRACT MANAGEMENT & NEGOTIATION**

The company’s law department has used a combination of practices to enhance capabilities and efficiencies in the area of contracts negotiation and administration. These practices include developing template agreements and alternative clauses, training business personnel to take the lead in preparing and negotiating contracts using the law-department approved tools, and involving legal analysts in the process. The law department’s Manager of Staff Operations described two key business areas where these contract processes are in place: supply chain management and marketing and sales.

- **Supply Chain Management Contracts:** The law department has developed template agreements for various types of contracts, and with varying degrees of complexity and risk. Business personnel take the lead in preparing and negotiating contracts, having received periodic training on the template forms and contract negotiation process and expectations from the law department. Legal analysts assist with the client training.

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How does the contract drafting process work? For “low risk” matters where the business personnel are able to use the templates without modifications, clients may draft, negotiate, and finalize these contracts. For “moderate risk” matters, business personnel may select alternative clauses from a menu of pre-approved alternatives. In the event that the business personnel utilize a pre-approved alternative clause, the process requires that the draft contract be forwarded to a legal analyst for review. Lawyers negotiating the non-standard and complex transactions often team with a legal analyst to provide efficient client support and enhance knowledge sharing among the group.

- **Marketing & Sales Contracts with Paying Customers:** Here again, the company’s law department has developed approved template agreements that business personnel are trained to use. This area is described as dynamic and the law department (including legal analysts) holds monthly meetings with business personnel to review contract terms and issues.

For these contracts, business personnel have been granted authority to draft, negotiate, and finalize contracts that involve some variation on language. All contracts are ultimately reviewed by a lawyer.

#### LEGAL ANALYST ROLES IN LABOR & EMPLOYMENT PRACTICE AREA

Legal analysts in the law department’s labor and employment practice group perform a broad range of roles. The Vice President of the Labor & Employment Law section explains that the law department’s approach for hiring legal analysts for this group has been to seek highly skilled paralegals from outside law firms with courtroom experience and excellent investigative and writing skills. She emphasizes the importance of these skills and experience here since, among other important functions, legal analysts for this group take a leading role in the following areas:

- **EEOC and Wage Claims Cases:** Legal analysts investigate, research, and write draft responses to EEOC charges and wage claims. Lawyers on the team review the responses and provide guidance on an as-needed basis. Legal analysts have represented the company at wage claim hearings and in small claims court cases where lawyer representation is not required and sometimes not permitted.
- **Litigation Support:** Legal analysts provide extensive support in the litigation process, including locating responsive documents, responding to discovery requests, preparing documents and exhibits for trial, and serving as in-courtroom support. In addition, the company’s legal analysts are highly skilled at legal research and drafting and often aid in the drafting of pleadings and briefs. Their presence on a case significantly lowers the expenses paid to paralegals employed by outside counsel.
- **Mediations:** Legal analysts for this practice area have served as company representatives at mediation proceedings, and are vested with settlement authority to resolve certain mediation cases.

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- **Immigration Function:** The Vice President of the Labor & Employment Law section explains that this function is staffed by a legal analyst who focuses on immigration issues full-time. The legal analyst is the primary “go-to” person on all immigration issues, and interacts directly with outside counsel on matters and cases.

## LEADING PRACTICES

Asked which of the law department’s practices in this area they would consider to be leading practices, the Vice President of the Labor & Employment Law section explains that the department hires highly skilled legal analysts from private practice and utilizes them for work which is generally performed by first, second or third year associates at the law firms—under the supervision of a lawyer. She also emphasizes that the company takes care to ensure that the lawyers and legal analysts function as a team of professionals. Asked where they believe they have achieved the greatest efficiencies, these company representatives respond that efficiencies have been gained by empowering the department’s legal analysts to take “go-to” responsibility for a variety of work processes that involve commodity-type work and might be considered more routine in nature. This allows legal analysts to utilize their skills and experience, freeing up lawyers to focus on providing proactive, preventive and strategic legal advice.

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*ACC thanks Renee Dankner, former senior counsel to ExxonMobil, for her work in preparing this profile.*

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## III. RESOURCE LIST

***Please note that this listing does not constitute a recommendation or endorsement for any product, service or company. Please find below a list of resources identified by companies or by ACC as possible resources that may be helpful or of interest in evaluating or developing law department management practices using non-lawyer personnel.***

### COMPANY PROGRAM RESOURCES

#### ConocoPhillips

Business Service Organization Chart and Service Descriptions  
[http://www.acca.com/protected/forms/lawdman/business\\_chart.pdf](http://www.acca.com/protected/forms/lawdman/business_chart.pdf)

#### FMC Technologies, Inc.

ACES Brochure  
[http://www.acca.com/protected/forms/lawdman/aces\\_brochure.pdf](http://www.acca.com/protected/forms/lawdman/aces_brochure.pdf)

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ACES Program Description

[http://www.acca.com/protected/forms/lawdman/aces\\_program.pdf](http://www.acca.com/protected/forms/lawdman/aces_program.pdf)

ACES Outside Counsel Evaluation Metrics

[http://www.acca.com/protected/forms/lawdman/aces\\_metrics.pdf](http://www.acca.com/protected/forms/lawdman/aces_metrics.pdf)

Anonymous Company

Legal Assistant Career Guide

<http://www.acca.com/protected/forms/lawdman/legalasst.pdf>

Anonymous Company

Paralegal I

[http://www.acca.com/protected/forms/lawdman/paralegal\\_1.pdf](http://www.acca.com/protected/forms/lawdman/paralegal_1.pdf)

Paralegal II

[http://www.acca.com/protected/forms/lawdman/paralegal\\_II.pdf](http://www.acca.com/protected/forms/lawdman/paralegal_II.pdf)

Senior Paralegal

<http://www.acca.com/protected/forms/lawdman/srparalegal.pdf>

## PUBLICATIONS; ARTICLES

Book: THE DOLLARS AND SENSE OF PARALEGAL UTILIZATION- The Dupont Paralegal Utilization Model

<http://www.dupontlegalmodel.com> (click on product catalogue)

Handbook: Paralegals, Profitability, and the Future of Your Law Practice, written by Arthur G. Greene and Therese A. Cannon

<http://www.abanet.org/lpm/catalog/promo/012904.html>

Presentation: *The Role of the In-House Paralegal*, by Franklin A. Miles, Jr. Esq. And Sheri-Su Breski, Paralegal/Supervisor (Nov 6, 2003)

<http://www.acca.com/protected/reference/smlaw/paralegal.pdf>

Presentation: *Strengthening the Corporate Perception of the Law Department*, by Mary H. Barnes (Coperion Corporation), Jeffrey Carr (FMC Technologies, Inc.), and Rhonda J. Schwartz (Fortis Financial Group) (ACC 2001 Annual Meeting Materials)

<http://www.acca.com/shanghai/resources/strength.pdf>

## ADDITIONAL SOURCES FOR HELP

National Federation of Paralegal Associations: <http://www.paralegals.org/>

The Missouri Bar's "Practicing with Paralegals" Homepage:

<http://www.mobar.org/pamphlet/pracpara.htm>

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