

## VIRTUAL PARALEGALS IN LITIGATION

In the legal industry, virtual paralegals are gaining ground in a number of practice areas, such as bankruptcy, corporate matters, and estate planning. However, the fact is that a virtual paralegal can offer huge benefits to attorneys in a litigation practice as well. Our purpose here is to discuss those benefits, and answer some of the questions litigators have about working with a virtual paralegal.

Many litigation practices are perfect candidates for utilizing virtual paralegals: They have frequent work overloads which tax their existing staff; they have no budget for adding to their payroll; and their physical space and equipment resources are limited. This is the perfect scenario in which a virtual paralegal can help the most.

But how does a litigation attorney go about incorporating a virtual paralegal into his or her practice?

We are going to discuss five important areas a litigator might investigate when contemplating working with a virtual paralegal.

So what is the first consideration?

### **Understanding the term**

First and foremost, it is important to understand what the term “virtual paralegal” means. Describing oneself as a virtual paralegal in many social settings can still elicit a blank stare! It is difficult to appreciate the benefits of hiring a virtual paralegal if one is confused about what the term means.

In the case of virtual paralegals, “virtual” does not mean “almost,” as in “virtually unknown.” Nor does it mean “simulated,” as in the “virtual reality” of a video game.

It simply means working remotely - virtual as in “occurring mostly online.” ***Think of it as telecommuting!***

Telecommuting is certainly not a new concept in law practice. Both lawyers and staff work from home at many law firms. Technology permitting, they may even log into a work server remotely to exchange emails and edit documents from home. Many law firm employees are accustomed to searching databases, drafting privilege logs, and all manner of other litigation tasks from their own home computers.

Yes, virtual paralegals are telecommuters! They are telecommuters with two important distinctions: They are not full time employees – meaning there are no benefit costs, overtime pay or payroll taxes associated with their employment. And they use their own equipment instead of the law firm’s resources – meaning the law firm needn’t free up work space, computers or other resources in order for the work to get done. Both of these factors provide great cost saving benefits to litigators!

Which leads to the next consideration:

## **Technology**

Some attorneys might believe they do not have the requisite technology for utilizing a paralegal working from a remote location. But they do! Tools employed by every office – telephone, mail, email, fax, scanning and internet access – can be used to share documents, information and projects back and forth with a virtual paralegal. In fact, these are the tools routinely used for sharing documents and data within the office, and outside it to clients, experts and the courts.

In addition, virtual paralegals are already set up to work remotely. They typically have additional tools at their disposal to work effectively and efficiently with a law firm client in any location.

There are a number of software programs available for securely sharing files back and forth between remote locations. Perhaps the most familiar tool is an FTP client ([File Transfer Protocol](#)), which enables the lawyer and paralegal to upload and download large files over the internet.

Other software programs provide secure online repositories for documents. While designed for safe online computer back-up, they also provide a secure means of file sharing. Using one of these programs, a remote working paralegal can create a series of folders and sub-folders for storing case documents. These files are accessible via link or password to both the lawyer and the paralegal from any computer or location. In this way, both lawyer and paralegal can store, access or revise any case related materials whenever they need to. [Dropbox](#) and [SugarSync](#) are two examples of such programs.

Finally, there are software programs that actually create a secure collaborative project management system of sorts online. They enable the lawyer and paralegal not only store case files and edit documents, but also to design a project, assign tasks to different team members, and track everyone's progress. [Box.net](#) and [Basecamp](#) are two examples.

So you see, every litigator has access to all the technology he or she really needs to work effectively with a remote working paralegal. It's much easier than it sounds!

Which leads us to another consideration when contemplating hiring a virtual or remote working paralegal:

## **Security and confidentiality**

All attorneys have a legal and ethical responsibility to ensure the security of all their clients' confidential documents, as well as their own work product. They have a duty to strictly maintain the privileged nature of all their communications with their clients. Naturally, they are reasonably concerned that their staff – whether employees or contractors – treat all documents and communications with the same diligent care.

These concerns lead attorneys to be careful about how and with whom files and documents are shared. While attorneys, and perhaps staff, work from home, they do so with these security and confidentiality needs in mind. Although documents are routinely exchanged with clients, experts, witnesses and co-counsel via hard copy, email, fax and other means, lawyers assure themselves

that this information will be handled with appropriate confidentiality. These same concerns apply to exchange of documents and information with a virtual paralegal as well.

It is incumbent upon the virtual paralegal to provide reliable evidence that she or he can maintain strict security of all paper and digital files. Any lawyer contemplating hiring a remote working paralegal will want to inquire into her business practices.

- How does the paralegal secure and store paper and electronic files?
- How long are paper or digital copies retained, if at all?
- What computer back-up systems are used to ensure that files are not deleted or otherwise lost?
- What security measures are taken with computer files, online storage, and back-up files to prevent disclosure?
- Does the paralegal's computer system have a firewall and secured WiFi?
- Are the cloud or internet based software programs the paralegal uses encrypted?

Paralegals, be they employee or contractor, share with attorneys an ethical duty of confidentiality. The ABA Model Rules of Professional Conduct, state rules modeled thereon, and guidelines for paralegals adopted by state bar associations, state courts and paralegal professional organizations, all require paralegals to guard the confidentiality of all client information. This duty of confidentiality applies as firmly to paralegals working remotely as it does to a law firm's own staff.

Moreover, these issues should be addressed in the contractor agreement executed between the attorney and paralegal before any work is performed. The agreement should at a minimum state that the paralegal will not disclose, by any means, information regarding the attorney's business processes, clients, or client information. The agreement should also discuss the virtual paralegal's business practices regarding document retention and security.

So you see, with a complete understanding of a virtual paralegal's business practices, and a contract in place, a litigator can have confidence in using the services of a virtual paralegal.

However, this leads to another question to consider in hiring a remote working paralegal:

## **Trust**

In all work relationships, trust takes time to build and develop. When attorneys hire permanent staff, they do their best to assure the new employee will be an asset to the team, and then take the time to get to know the employee's work first hand.

Of course, when a full time or contract paralegal works in house, the attorney can observe his or her work ethic and output. But how does an attorney monitor a remote working paralegal?

First of all, every attorney contemplating hiring a paralegal, whether full time, contractor or virtual, enquires into the paralegal's training, background, work history and references. In California, an attorney will also want to verify that the paralegal meets the training and continuing education standards required by [Bus. & Prof. Code §6450](#). In addition to minimum educational and/or work experience requirements, California paralegals must complete

Mandatory Continuing Legal Education courses both in general topics and in ethics on an ongoing basis.

As we discussed above, all paralegals are bound by the same rules of professional conduct regarding client confidentiality that attorneys are. A qualified virtual paralegal selling services to attorneys knows this, and wants to protect the confidentiality of an attorney's clients. Moreover, the virtual paralegal's Contractor Agreement will no doubt address this issue.

In addition, a competent virtual paralegal will have enough work experience to provide a reasonably accurate estimate of the amount of time a given project will take. She or he will provide regular progress updates, and immediately advise an attorney client of the reasons for any delays or revisions to that estimate. A virtual paralegal's business will suffer if she proves herself unable to perform the requested work in the allotted time frame.

Attorneys and firms will want to vet any virtual paralegal they are considering hiring. Perhaps they will even want to spend time developing a professional relationship prior to hire, or assign small jobs to see how the paralegal performs before entrusting him or her with major projects.

As with all other aspects of the working relationship, clear and frequent communication is the key to developing trust when working with a virtual paralegal. When each party communicates clearly about his or her expectations, the project instructions, and the progress being made, everyone wins.

And finally we come to the last question to consider in hiring remote working paralegals:

### **Delegating Suitable Tasks**

Some lawyers believe that all the work they require simply has to be done on-site. Or said differently, they believe they need the immediacy of a paralegal close at hand for urgent projects.

Let us concede that there are a small number of tasks which cannot readily be performed from a remote location: making copies, for example, or meeting with clients, experts or witnesses.

However there are a host of tasks that are perfectly suited for a remote working paralegal. These tasks include organizing and maintaining electronic case files in a secure, online file management system. They include drafting correspondence, discovery, discovery responses and simple pleadings. They include performing suitable legal or procedural research. They include reviewing documents, preparing document productions, and summarizing depositions. They include cite checking briefs, downloading case law, and e-filing documents.

For example in my own business, I have performed online and law library research on procedural issues and drafted memoranda outlining my findings for attorney clients. I have uploaded all relevant statutes and case law to online shared document folders for my clients' review. I have drafted and served notices to all parties in my clients' cases. I have reviewed and organized client documents, both in paper and electronic formats. I have bates numbered documents for production. I have reviewed document productions to compile data needed for motions. I have drafted declarations and assembled their exhibits.

These are just a few examples of the many services a virtual paralegal is able to provide to litigation attorney clients, working remotely from his or her own well-equipped office.

A competent virtual paralegal can help an attorney evaluate which projects are best suited for her assistance, and can help break the project down into tasks which the attorney can delegate to both in-house and remote working staff.

### **Conclusion**

Virtual paralegals are telecommuters, with no accompanying costs associated with employee benefits, overtime pay or payroll taxes, and no tying up of the firm's equipment and resources. Virtual paralegals make use of readily available technology in communicating and sharing information and work product with their attorney clients. A reputable virtual paralegal will have business practices in place which assure the security of all client files and materials, and will understand her responsibility to maintain the strict confidentiality of all her attorney clients' business processes and privileged information. A virtual paralegal can help streamline the case load of any litigation practice.

It's a win-win for us all!