Solution and Answer Guide

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# Questions for Study and Review

1. Define paralegal.

**Answer:** A paralegal assists attorneys in preparing client cases. This includes assisting in interviews, investigation, document preparation, pre- and post-trial activities, trial and settlement, and any other activities permitted by statute or case law.

1. Why is a paralegal valuable to a law firm? Identify significant legal authority on billing for paralegal time.

**Answer:** Paralegals can perform a multitude of tasks more economically for the client. This includes preparing letters, preparing documents, and investigative functions when necessary. *Missouri v. Jenkins* is the U.S. Supreme Court case that recognized that a paralegal’s time can be billed as a fee and awarded by the court in assessing attorney’s fees.

1. Why are timekeeping and deadline control important?

**Answer:** Timekeeping is critical to billing. Deadline control is key in assignments, especially those dealing directly with a court.

1. What are some ethical concerns regarding timekeeping and billing?

**Answer:** Paralegals cannot set fees for a client and cannot split fees with an attorney. The paralegal cannot perform tasks that are considered the unauthorized practice of law.

1. What are some of the advantages and pitfalls in using social media in the law office setting?

**Answer:** Social media has a myriad of uses and advantages, such as a networking tool to gain additional client business or even to see or hear what other law firms are doing. Firms are using social media as a way to promote their services and specializations to a target audience. It is an inexpensive way to promote the firm. Keeping up with social media through posting information can be time consuming, but well worth it. It helps law firms understand the needs of the client, see what people are talking about, and check to see what the competition is doing. But social media is not without its drawbacks and restrictions. Always remember that client confidentiality is fundamental to the practice of law. Using social media is no exception. That means don’t engage with clients or potentials clients in discussions about their cases as no one wants to cross any legal or professional ethical lines.

1. Define *professional ethics* in the context of the practice of law.

**Answer:** Professional ethics, as applied to attorneys, refers to the rules of conduct that govern the practice of law.

1. Why are professional ethics so important to a law firm?

**Answer:** A breach of ethical standards will reflect badly upon the firm or employer and may also lead to the disbarment of an attorney. It may cost a paralegal his or her job and subject the paralegal to prosecution for the unauthorized practice of law.

1. What are the things a paralegal may not do?

**Answer:** Paralegals *may not* perform any of the following functions:

* 1. Provide legal services directly to the public without the supervision of an attorney. More states and the federal system are permitting paralegals to represent the public in limited controlled settings, such as landlord/tenant matters, immigration, and Social Security cases.
  2. Give legal advice or counsel a client. Legal advice is independent professional judgment based on knowledge of the law and given for the benefit of a particular client.
  3. Represent a client in court or other tribunal or otherwise act as an advocate for a client unless specifically permitted to do so by law or rule of court. (See previous answer part a for further clarification.)
  4. Accept or reject cases for the firm.
  5. Set any fee for representation of a client.
  6. Split legal fees with an attorney (bonuses and profit-sharing plans not tied to a specific case are permissible).
  7. Be a partner with a lawyer if any of the activities of the partnership include the practice of law [exception: the District of Columbia Ethics Rule 5.4(b)]. The American Bar Association rejected a proposal to relax the prohibition against fee sharing and multidisciplinary practice.
  8. Solicit cases for a lawyer.
  9. Perform tasks that are the unauthorized practice of law as defined in the pertinent state.

1. What are the seven criteria that assure a paralegal’s actions will not be or cause a breach of ethics?

**Answer:**

1. The task must be delegated by an attorney.
2. It must be performed under an attorney’s supervision.
3. Paralegals must clearly designate their status as a paralegal.
4. The lawyer must retain a direct relationship with the client (the attorney must retain control over the relationship).
5. The task must involve information gathering or be ministerial and cannot involve the rendering of legal advice or judgment (unless the legal advice or judgment is provided by the paralegal directly to the attorney).
6. The work must be given final approval or be examined by the attorney.
7. The work must not have a separate identity but merge with the attorney’s final work product.
8. What is a conflict of interest and the rationale for the relevant ethical standards?

**Answer:** A paralegal should avoid and reveal any conflicts of interest. This requirement rests on the rationale that citizens must have faith in the legal system to seek the peaceful resolution of their disputes. Because conflicts of interest can dilute an attorney’s allegiance to the client and damage independent professional judgment, they are barred by the *Model Rules of Professional Responsibility*. A paralegal must also be loyal to the client and avoid such conflicts.

1. What is meant by the term *professional loyalty* as applied to your fellow workers? The client? The practice of law?

**Answer:** In professional working relationships, mutual respect and loyalty between employer and employees is especially important. Publicly criticizing one’s fellow workers or one’s clients, who deserve the utmost courtesy, respect, and a legal professional's every effort to preserve their dignity, is not consistent with professional loyalty. Relationships with clients must always be kept on a professional level. If a relationship becomes too personal, it threatens objectivity, confidentiality, and one’s loyalty to the firm. Professional loyalty to the firm extends to the practice of law, which supersedes loyalty to any specific individual. Attorneys are directed to call attention to the unethical practices of other attorneys, or, in some instances, of the illegal conduct of their own clients to avoid assisting in fraud or crime.

1. What are the characteristics of the common components of court systems in the United States?

**Answer:** The federal and state court systems have at least two types of courts in common: the trial court and the appellate court.

1. What is jurisdiction? Define the various kinds of jurisdiction: geographical, personal, general, and so on.

**Answer:** *Jurisdiction* is the power or authority of a court to hear and decide the questions of law or fact (or both) presented by a lawsuit. Most courts have *geographical jurisdiction*, meaning that they hear cases that arise within specific geographical boundaries. The court also has *personal* (*in personam*) *jurisdiction*. This means the court must have the power over the particular person named in the lawsuit to enter a judgment against that person. *In rem (property) jurisdiction* is the authority of the court to attach (seize) property (real estate, jewelry, bank deposits, or other property) within its geographical jurisdiction to resolve claims to the property. *Quasi in rem jurisdiction* is the authority of a court to seize and use property (within its jurisdiction) of a defendant over whom it does not have personal jurisdiction to pay a judgment against the defendant entered in an action indirectly related or unrelated to the property. If a court has *general jurisdiction,* it can hear all types of cases. Most states have trial courts of general jurisdiction in which subject matter jurisdiction is assumed unless one party can demonstrate that the court does not have the necessary subject matter jurisdiction. *Original jurisdiction* indicates that cases first enter the system at this court level—they “originate” here. Most trial courts are courts of original jurisdiction. A court has *limited jurisdiction* if its authority to hear and decide cases is limited to specific types of cases. Limited jurisdiction becomes *exclusive jurisdiction* if a court is the only court permitted to handle a specific type of case.

1. What are the personal jurisdictional considerations regarding a defendant when the Internet is involved?

**Answer:** Refer to *Zippo Mfg. Co. v. Zippo Dot Com, Inc.,* 952 F. Supp. 1119 (W.D. Pa. 1997). The *Zippo* case created a new test that focused on Internet cases—a sliding-scale test based on the quality and nature of the Internet activity. Was the defendant actively doing business through the Internet or was the defendant simply posting information (which the court referred to as “passive”)? Where the activity is passive, the court will not assert jurisdiction. The test must be applied on a case-by-case basis by examining the level and nature of the activity of the Internet business involved. Although the *Zippo* analysis has been adopted by the majority of federal courts, there is no commonly accepted test for Internet cases.

1. What three things must a court have in order to hear a case and bind a party to the court’s decision? Be able to apply these concepts to determine what court or courts can hear a lawsuit depending on domiciles of the parties and other factors.

**Answer:** A court must have subject matter jurisdiction and venue. Of the courts that have both subject matter jurisdiction and venue, it must be determined which, if any, of these courts have personal jurisdiction (or in the case of property such as real estate, which has in rem jurisdiction over the property). To gain personal jurisdiction over the defendant, the defendant must be served with a summons and complaint.

# Application Assignments

1. Using the ethical standards and rules cited in this section, answer the following questions on ethics.
   1. You have just researched an issue and have found that inattentive driving is a breach of the duty of care that a driver owes to others. In a phone conversation the client asks you, “If the driver of the vehicle that struck was inattentive, is he in the wrong?” How should you answer?

**Answer:** “I’ll ask [attorney] and get back to you,” or “In response to your question, [attorney] says ‘yes, the driver would be in the wrong.’”

* 1. Ms. Pearlman asks you to draft a release of medical information form for a client. This form is then signed by the client and given to the hospital. Under what conditions can you do this and avoid the unauthorized practice of law?

**Answer:** The task must be delegated by an attorney; the attorney will have to review it for accuracy; the paralegal will have to identify himself or herself as a paralegal in any dealings with the client; and the attorney will have to maintain control over the client’s case. This task must not involve the giving of any legal advice and must merge with the overall final work product of the attorney on behalf of the client.

* 1. You are working on a client’s case for Ms. Pearlman. She is gone, so you want to consult with Mr. White, another attorney in the firm. To do so, however, you must reveal to Mr. White some confidential information about the client. Would this be a breach of confidentiality?

**Answer:** No. the authorization for this disclosure is implied under Rule 1.6(a).

1. You are a paralegal working for an attorney who has represented Safe Bet Insurance Company. A potential client wants to sue Safe Bet. Is there a potential conflict of interest, and if so, may your attorney represent the new client?

**Answer:** The ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 05-435 (Dec. 8, 2004) says that if the former client and potential client are informed and both consent, representation of the latter is okay. The opinion adds, however, that this practice is likely to lead to distrust.

1. In interviewing a client, you and your attorney are convinced that some information provided by the client is false. What consequences can result from the presentation of such information to the court? What model rule of professional conduct applies?

**Answer:** The finding that the lawyer is in a serious ethical breach as defined in Rule 3.3(4) could lead to disbarment. The paralegal could be removed from membership in local or national paralegal associations.

1. Determine in which courts subject matter jurisdiction, personal jurisdiction, and venue exist in the following problems.
2. M, a resident of Wisconsin, and O, a resident of Minnesota, sue Corporations X and Y for industrial injuries amounting to $40,000 for each plaintiff resulting from an accident that occurred in Illinois. X is incorporated in Delaware and Ohio, and Y is incorporated in North Carolina with its principal place of business in Ohio.

**Answer:** There is not federal jurisdiction because the plaintiffs cannot aggregate the claims to make the jurisdictional amount. All states mentioned have general jurisdiction. State venue exists in at least Delaware and Ohio for X, in North Carolina and Ohio for Y, and in Illinois for both X and Y because that is where the action arose. Personal jurisdiction, however, can be gained only in Ohio over both defendants. The action must be brought in Ohio state court or as two separate actions in any of their resident states.

1. J and K reside in Oregon and sue R, who resides in Kentucky, and S, who resides in Washington, for a tort (libel) amounting to injuries exceeding $75,000 each, which occurred in Washington.

**Answer:** All state and federal courts have subject matter jurisdiction (there is diversity). Venue rests in state courts in Kentucky (for R) and in Washington (for S), and in Washington, where the claim arose. Federal venue for a diversity action against R exists in the district in Kentucky where R resides. Venue for an action against S exists in Washington, where S resides. Venue for an action against both R and S exists in Washington, where the substantial event arose. Personal jurisdiction for a state action exists in Kentucky for R only and in Washington for S only. Personal jurisdiction for a federal action exists in Kentucky for R and in Washington for S. Unless Washington has a long-arm statute that reaches tortfeasors, a separate action must be brought against R and S in both states and in their respective federal districts. If Washington has an appropriate long-arm statute, both a joint state and federal action can be brought in the state of Washington.

1. Glitter is a corporation that rents expensive jewelry to businesses and individuals. It is incorporated in Delaware and has its principal place of business in northern Indiana. It is licensed to do business in every state except Alaska and Hawaii. Flick, Inc., is a movie company incorporated in Idaho with its principal place of business in Utah. It does no business to speak of in any other state.

During Flick’s filming in Nevada, an expensive necklace rented from Glitter falls into a piece of machinery on the set and is destroyed. Glitter wants to sue Flick for negligently destroying the jewelry (worth $700,000). Flick decides to sue Glitter, blaming the loss of a week’s filming on the loss of the necklace, which they claim was caused by a faulty clasp made by Glitter. Answer the following and provide an explanation for your response.

1. If Glitter sues Flick, is there subject matter jurisdiction in federal district court?

**Answer:** Yes.

1. What, if any, kind of subject matter jurisdiction exists in federal district court?

**Answer:** Diversity.

1. What issue concerning personal jurisdiction exists when considering suit by Glitter against Flick in Nevada state and federal court?

**Answer:** Whether the state has a long-arm statute that will permit personal jurisdiction on Flick for having filmed one movie in Nevada, where the action arose.

1. Aside from Nevada, in what state and federal courts can Glitter sue Flick?

**Answer:** State courts: Idaho and Utah. Federal courts: District of Idaho and District of Utah.

1. If Flick sues Glitter, does venue exist in the state courts of Idaho and Utah? Why or why not?

**Answer:** No. State court venue normally rests in the state of the defendant and where the action arose.

# Case Assignments

1. Your law firm has been hired to represent Ann Forrester in her lawsuit against Mercury Parcel Services, Inc. and its driver Richard Hart. Determine in what court would any future lawsuit be filed and explain the basis for your decision.

**Answer:** State of Columbia: Middleton County.

1. As Mrs. Forrester's attorneys, what ethical obligations do you have regarding any communications you have with her regarding her potential lawsuit? What ethical obligations does your law firm have with regard to Mrs. Forrester's husband William?

**Answer:** A confidential relationship is created between the firm and Mrs. Forrester. That relationship is with her and not her husband. As a paralegal, all communications with Mrs. Forrester are privileged and confidential.

# Ethics Assignment

1. You find out that one of the paralegals in the firm is looking for a job with another law firm. He has been providing information to one of the opposing counsels on a case to cull favor with the attorney—hoping to land a new job. What are your ethical obligations in this situation? Should you report this to a superior or keep the information to yourself?

**Answer:** You are bound by your ethical obligations to uphold the interests of the firm and the client and thus must alert your supervisor about the actions of the other paralegal. Paralegals must be ever mindful of the high standard of professional ethics to which their actions must conform. A breach of ethical standards will reflect badly upon the law firm and may also lead to the disbarment of one or more of the attorneys involved. It may cost you your job and subject you to prosecution for the unauthorized practice of law. Thus, be aware of your ethical and professional responsibilities as a paralegal working in the legal profession. Paralegal ethical standards, for all practical purposes, are the same as those for attorneys. As a paralegal, you must always maintain the confidentiality of clients, be honest, and avoid conflicts of interest.

# System Folder Assignments

1. Set up a three-ring binder or electronic equivalent with the tab dividers arranged as described in the litigation system section of the text. Copies of the office structure and forms previously discussed should be placed in the systems folder as indicated in Appendix A. Begin a table of contents for your systems folder and add any information assigned by your instructor.

**Answer:** This assignment starts the use of the system. If you decide to have the students develop a systems folder, the setting up of the folder needs considerable emphasis now and throughout the course. You many choose to have the folder turned in periodically for evaluation. Unannounced and random spot checks or turn-ins for a grade might help fight inevitable procrastination.

1. Look up your state’s ethical rules that govern confidentiality, conflict of interest, attorney supervision of lay persons and legal assistants, professional integrity, and others. Record the rule numbers in an ethics section of your systems folder. Look up your state’s unauthorized practice of law statute; note the wording and the possible penalties. You might want to add this to your folder. As you read further in this text and in other sources, insert in your folder the citations for key ethical rules and guidelines.

**Answer:**

*What a paralegal may not do:*

* + - Provide legal services directly to the public without the supervision of an attorney.
    - Give legal advice or counsel a client.
    - Represent a client in court or act as an advocate.
    - Accept or reject cases for the firm.
    - Set any fee for representation of a client.
    - Split legal fees with an attorney.
    - Be a partner with a lawyer in practice of law (except in Washington, D.C.).
    - Solicit cases for a lawyer.

*Limits to what a paralegal may do:*

* + - The task must be delegated by an attorney.
    - It must be performed under an attorney’s supervision.
    - Paralegals must clearly designate their status.
    - The attorney must retain a direct relationship with the client.
    - The task must involve information gathering or be ministerial and cannot involve the rendering of legal advice or judgment.
    - The work must be given final approval by the attorney.
    - The work must merge with the attorney’s final work product.

*Also:*

* + - A paralegal shall hold inviolate the confidences of a client.
    - A paralegal must maintain the highest standards of professional integrity and avoid any dishonesty, fraud, deceit, or misrepresentation.
    - A paralegal should avoid and reveal any conflicts of interest.
    - A paralegal must strive to be competent and current in the field.
    - A paralegal should be loyal to the employer and to the legal profession and its standards.

1. Locate the names, addresses, Internet sites, and phone numbers of your local and state paralegal associations. If you need help obtaining this information, use the Internet or the director of a local paralegal program or any experienced paralegal. The headquarters of the state bar association might also have such information. For future reference, you may choose to place your expanded lists of sources for professional development in your systems folder.

**Answer:** You may choose to provide these as a handout. If placed in the systems folder, they will provide a handy future resource.

*State Paralegal Association Local Paralegal Association*

Name: Name:

Address: Address:

Phone: Phone:

E-mail: E-mail:

Web site: Web site:

Contact Person: Contact Person:

Meeting Dates Times: Meeting Dates and Times:

1. Make a copy of the federal court structure diagram found in this chapter and add any explanatory notes you feel will be useful to you in the future. Include in your diagram the names of U.S. district courts that sit in your state and the U.S. Court of Appeals that covers the circuit in which your state is situated. Check us.courts.gov for general information on the federal court system. It will have weblinks for state-specific information.

Make a similar explanatory diagram for the court system of your state. Research the material to be placed in the diagram, including any jurisdictional amounts, by looking under courts, judiciary, and jurisdiction in the index of your state statutes or constitution, usually located on your State Court Web site. Some states have an administrative office of the courts at the capitol, which may provide preprinted state court diagrams. Check ucsc.org, which is the National Center for State Courts Web site. It has a plethora of information on state court systems, including the territories.

Place both diagrams and the State Court Web site address in the court section of your litigation systems folder.

**Answer:** You may decide to provide the state court diagram addressed in this assignment. If so, include the jurisdiction of each court.

1. Consult the state’s legal directory in the library or online sites to obtain all court addresses, names of clerks of court, important telephone numbers, Web addresses, and so on. Research state statutes for the subject matter jurisdiction in your state’s highest, intermediate, and trial courts. Place this data in the court structure portion of your systems folder.

**Answer:** You may choose to provide this information, but it would be good for students to locate it so they become familiar with the state legal directory.