

# Contract or Virtual Paralegal

*An August 2010 discussion on SoloSez, the email listserv for general practice, solo and small firm lawyers*

I'm considering using a contract or virtual paralegal for my immigration practice. The person I have in mind used to work for my old Biglaw firm, but she is now in the process of setting up her own business as an immigration paralegal/assistant. I thought that it would be a good idea to ask the Solosez community for advice and ideas on how to best set up such an arrangement. I'm still new enough that I don't want to hire a paralegal as an employee because I don't know how my cash flow will be month to month. But, it would be nice to be able to contract out paralegal work when I'm busy.

One concern that I have is that I know that my potential contract paralegal is active in organizations where she regularly meets people who are my potential clients. If she referred a potential client to me, would that create any problems with the rules of professional conduct? I wouldn't be paying her a referral fee, but if the potential client did retain me then there would be a possibility that she would end up doing the paralegal work on the case. Basically, by referring potential clients to me, she would be helping to make sure that I was busy enough to need paralegal assistance.

What issues should I be aware of with setting up a contract or virtual paralegal arrangement? Does anyone have a model contract that they would be willing to share?

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First, you must be careful about compensating a non-attorney for a referral. Ethics rules are different in each state but it is my understanding that no state permits attorneys to fee-share with a non-attorney regarding referrals. If you want to "thank" him/her for sending you a client, do it within the process of compensating them for using their services for that client's work. I would be happy to help you off-list with ideas of how to do that ethically.

Second, a freelance paralegal business owner makes good sense on a number of plains. Their work is transactional. You are not paying them for more than the specific work they do for you and not for the time they spend with other

attorney's, or when they are on vacation or sick, or for their healthcare. That comes out of their pocket. You are not subject to employer taxes or workplace concerns. They are 1099 contractors and are responsible for their own processes, equipment and taxes. Make sure that is explicitly stated in your agreement.

Third, HAVE an agreement in place if she does not. I had my attorney draw up my paralegal services agreement long ago which all my paralegal services clients sign before we begin any work. It explicitly lays out our responsibilities, the attorney's responsibilities and that for which we are not responsible. We also always have a discussion regarding what is to

be expected of us and lay that out in writing too, which avoids wrong assumptions of what is expected on both sides.

If your paralegal wants to be a business owner rather than a temp, you won't have as much to worry about, but make sure you have that relevant discussion. Because of the lack of jobs, there are a number of newly minted paralegal students and even those former BigLaw employees who have decided to "go freelance" without the slightest idea of their responsibilities as business owners, which means know who you are hiring. Go through a temp agency if you want someone in your office who is only interested in being told what to do and handed work. Find an experienced freelance business owner if you want someone who will be proactive in their own work and not need to be told what to do every step of the way. Times are tough but you need to protect your business so make sure you check their background and references.

Of course, in your case, you are already somewhat aware of your paralegal's skills having worked with her, but I would still advise that you to do your due diligence in calling her past supervisors to try to get them to tell you about her work. It's just good business.

A good place to start looking and advertising for a freelance contractor is the Freelance Paralegal Yahoo group, [freelanceparalegal@yahoogroups.com](mailto:freelanceparalegal@yahoogroups.com), or on the \*ParalegalGateway's\* job board on LinkedIn. I hope this all helps.

Thanks.

Lyza Sandgren (not a lawyer), Georgia

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I think this is an excellent way to look at things, and would suggest you keep the following items in mind:

1. I've found my services work best for my clients when the scope of an assignment is relatively clearly defined. This usually means my clients have to spend a little time thinking about and defining the parameters of the assignment, so that I know both what I'm expected to do and what the desired outcome is. (There's a saying that "if you don't know what 'done' looks like, you'll never know when you're done.") Once I've worked with an attorney two or three times, I can start to anticipate her needs and work with less direction.

2. Make sure your virtual paralegal understands the "big picture" of the case, beyond just the individual assignment you're giving. I recall one client for whom I was working on the argument section of an appellate brief. Rather than just giving me the record of the challenged hearing, she gave me the whole appellate record and the whole client file. As a result, I was able to anticipate a legal issue she'd overlooked in her outline of the appellate argument, and to find a way to address that issue. Without the big picture knowledge of the case, I might not have been able to do that. In every jurisdiction of which I am aware,

paralegals (virtual or otherwise) are within the umbrella of attorney-client privilege, so don't be afraid to share the information your paralegal needs to do her job. The more I know about a case, the more effective I can be at anticipating my attorney's needs and having the information and resources she needs available.

3. Remember that your virtual paralegal isn't an attorney, but is still a legal professional, and strive to develop a relationship that is collaborative and not hierarchical. The attorneys with whom I work best have trust in my skills and abilities, actively solicit my input on matters of legal doctrine and strategy, and allow me (within the scope of what I can legally do as a paralegal) the autonomy to spread my wings a bit. This is always ultimately to everyone's benefit. In the appellate argument I mentioned above, my attorney didn't tell me "I want you to brief the following specific issues of law." Instead, she gave me the Appellant's Opening Brief and the case file, and said "Tell me what issues you think we should address, and then we'll compare your list with mine." By that point, we'd worked together enough to develop a level of trust, and that trust allowed for a free flow of ideas and knowledge that we all benefitted from.

4. When you assign work to your paralegal, make sure the scope of work includes mandatory check-in points. This is both to control costs, and so you can see the work-in-progress and make sure you're on the right track. My clients usually will give assignments like "Research the law on this issue and prepare a memo for me. Please spend a half day or so on this, and then check in with me and let me know what you've found out." I encourage my clients to set these kind of check-in points, especially early in our relationships. Once I've worked with an attorney for a while, we get to know one another's needs and abilities better, and this becomes somewhat less important.

5. Always, always, always carefully review your paralegal's work, especially when it comes to trial briefs, motions, appellate briefs, etc. As a paralegal, I am always acutely conscious of the fact that it's not MY law license that's on the line if I mess up, and that knowledge makes me cautious and conservative in my work. But, I still insist that the attorneys I work for review my work carefully, because I know what's at stake. Remember that you, as the attorney, are ultimately responsible for your paralegal's work.

> One concern that I have is that I know that my potential contract paralegal is active in organizations where she regularly meets people who are my potential clients. If she referred a potential client to me, would that create any problems with the rules of professional conduct?

So long as you aren't paying her a referral fee, I don't believe this is an issue, but if you're worried about it, you can check with your State Bar's ethics committee or similar.

Hope that helps. If you have other questions, or if there's anything I can clarify, please don't hesitate to ask.

Warmly,

Tammy

Tammy Cravit (not a lawyer), California

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I use a virtual paralegal. Key contract terms:

1. Client confidentiality,
2. Payment terms (flat fee or hourly) but not linked in any way to client acquisition.
3. Details on file maintenance,
4. I like to include service expectations (draft turnaround),
5. Warranties of good character, no criminal history (especially fraud"), understanding you will do background check,
6. Agreement that clients are you, no contact without your permission, and no contact after separation,
7. Agreement on payment terms,
8. Rights to terminate for both parties.

Michael A. Gort

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Michael listed the following in his excellent list of contract terms.

> 6. Agreement that clients are you, no contact without your permission, and no contact after separation,

I wanted to comment on two specific issues this raises:

1. I'm not sure the "clients are yours, no contact after separation" is really solving any problem. Ordinarily, (and in some states, such as California, by statute) a paralegal is contracted by lawyers, not by the end client, and so a paralegal could never contract with one of your clients directly anyway. Also, I think the "no contact after separation" clause may create problems. Suppose your client retains another attorney, and that attorney also works with the same virtual paralegal. Do you really want to tell the client that that paralegal can't work on their case? As a matter of attorney-client privilege, the privileged material is following the client, so I'm not sure there'd be an issue there. Also, I wonder if states (like California) that have deemed non-compete agreements as contrary to public

policy would look at such a clause as analogous to a non-compete agreement in that it inhibits the ability of the paralegal to freely change for whom they're working.

2. Likewise, I think that the "no contact without your permission" could present an undue burden to your virtual paralegal's ability to get her job done, depending on the type of practice you operate and the kinds of services you're asking her to provide, This is something each lawyer will obviously have to decide for themselves. I've worked for attorneys where such a rule would be sensible, and others where it wouldn't be, so I wouldn't call this an absolute rule in all cases.

On a related note, at least in California, you don't necessarily need to add a specific client confidentiality clause, since the requirement that paralegals adhere to attorney-client confidentiality is specified in the statute (Cal. Business & Professions Code, section 6453). However, California attorneys should include something whereby the paralegal warrants that she meets the requirements of section 6450(c) [qualifications to use the titles 'paralegal' and 'legal assistant'] and 6450(d) [MCLE] of the Business and Professions Code.

Warmly,

Tammy

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Tammy Cravit

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Tammy brings up some excellent and very important issues, and I agree with her, but I would like to offer another approach regarding client contact that my service abides by based on our experience.

CanopyParalegal does not and will not have direct contact with our attorneys' clients. That became policy for us several years ago due to the following incident.

I began to realize that a strong client relationship was being created not between one attorney and his client but between the client and me. I approached the attorney and explained that I thought it unhealthy that the client was so tied to me and had even expressed the preference of talking to me rather than the attorney. The attorney agreed and began calling the client to reestablish more rapport. Unfortunately, the attorney was not very socially or relationship-building adept and the client began calling me to complain that she wanted to work with me and not "him." I was stuck in the middle and knew it to be a time bomb.

Long story short, it did end badly all around. The attorney got mad at me (which I thought unfair) because the client was mad at both of us and fired the attorney, whereupon the

attorney fired me. Never wanting that to happen again, I instituted the policy of no non-attorney contact.

Therefore, my contract specifically states that no contact will be allowed between CanopyParalegal and the attorney's clients. We are specific to intellectual property, and primarily regarding trademark work, and this policy has both encouraged our attorney clients to create strong attorney/client relationships and strongly delineate what is expected of me and my paralegals.

This is only one approach, but it does work for us and for our clients. I hope this helps. Thanks.

Lyza Sandgren

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Thanks for this perspective. I can see why you would establish such a policy given your experiences, and I think for the kind of work you do it makes a lot of sense. I think the answer to this question for any given attorney depends in some measure on the kind of law you do and the kinds of tasks you plan to delegate to your virtual paralegal. The client I mentioned in my prior e-mail practiced juvenile law, and because of geographic and other considerations she did on a couple of occasions ask me to go meet with clients about specific issues, and in a few other cases she asked me to contact opposing counsel on her behalf. I would not, of course, have dreamed of doing so without her express direction, but for that situation it made sense. In other cases, permitting that kind of contact with clients or opposing counsel could very easily create problems like the ones you describe.

The more I learn about the practice of law and the working style of the various attorneys I support, the more I come to the conclusion that the only black-letter rule ought to be "there are no black-letter rules, and you have to do what works for the individual situation."

Warmly,

Tammy Cravit

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I completely agree, Tammy. Thanks for you input.

Best,

Lyza

Lyza Sandgren

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Thank you Lyza, Tammy and Michael! Your comments have been very helpful and I believe will help me get a solid start on building a professional relationship with my contract paralegal.

Sincerely,

Kimberley

Kimberley Schaefer, District of Columbia